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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. September 28, 2010

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on September 21, 2010

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. *ZON2010-00029 – City zone change from SF 5 Single-Family Residential (“SF-5”), TF 3 Two-Family Residential (“TF-3”) and MF 18 Multi Family Residential (“MF-18”) to LC Limited Commercial (“LC”); generally located on the northeast corner of Seneca Street and University Avenue. (District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading.

2. *SUB2010-00029 -- Plat of USD 259 5th Addition located north of Pawnee and on the west side of 143rd Street East. (District II)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Summer Jackson, Housing Member is also seated with the City Council.

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA (ITEMS 1 THROUGH 4)

1. *Agreement - U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

2. *Learjet, Inc. - Supplemental Agreement No. 3.

RECOMMENDED ACTION: Approve Supplemental Agreement No. 3 and authorize the necessary signatures.

3. *Allegiant Non-Signatory Airline Airport Use and Lease Agreement.

RECOMMENDED ACTION: Approve the Agreement and authorize the necessary signatures.

4. *Federal Aviation Administration - Lease No. DTFACE-91-L-10547 - Supplemental Agreement No. 7 - 1801 Airport Road - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the Supplemental Agreement and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 12A)

1. Report of Board of Bids and Contracts dated September 27, 2010.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2010</u>	<u>(Consumption on Premises)</u>
German Granados	Usuluteco Restaurant*	1714 East Northern

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates: (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Deeds and Easements:

- a. List of Deeds and Easements (See Attached)

RECOMMENDED ACTION: Accept documents.

5. Consideration of Street Closures/Uses.

- a. Community Events – Greater Pentecostal Church of God in Christ Family and Friends Day. (District I)
b. Community Events - Prairie Fire Marathon Set Up. (District I)
c. Community Events - 23rd Annual Jingle Bell Run/Walk. (Districts I and VI)

RECOMMENDED ACTION: Approve the request subject to: 1) hiring off-duty certified law enforcement officers as required; 2) obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and 3) Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Agreements/Contracts:

- a. ASR - Zebra Mussel Control Design Build Contract.
b. Blind and Physically Handicapped, Talking Books Contract.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Minutes of Advisory Boards/Commissions

Board of Code Standards and Appeals, August 2, 2010
Wichita Public Library, August 17, 2010
District VI Advisory Board, August 2, 2010
District VI Advisory Board, August 18, 2010

RECOMMENDED ACTION: Receive and file.

8. Use of City Self-Insurance Health and General Funds for 2010 Flu Shots.

RECOMMENDED ACTION: Approve the Agreement between the City of Wichita and Sedgwick County Health Department (SCHD).

9. Payment of Condemnation Award to Acquire Property from Brandon T. Bonewell at 1201 South 119th Street West for the 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project. (District V)

RECOMMENDED ACTION: Authorize payment to the Clerk of the District Court of the appraisers' award for acquiring 1201 South 119th Street West , for the 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project in the amount of \$10,653, together with the related appraiser fees of \$3,600 and court costs of \$175.50 for a total of \$14,428.50 as per the journal entry, for acquisition of this property.

10. Easement across City Owned Property at 2627 West 9th Street in Conjunction with the Wireless Array Lease with New Cingular Wireless. (District VI)

RECOMMENDED ACTION: Approve the easement and authorize necessary signatures.

11. Planeview Community Library Memorandum of Agreement. (District III)

RECOMMENDED ACTION: Endorse the City's participation in the partnership for an additional year and authorize the Mayor to sign the memorandum of agreement.

12. Second Reading Ordinances: (First Read September 21, 2010)

a. (List of Second Reading Ordinances)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

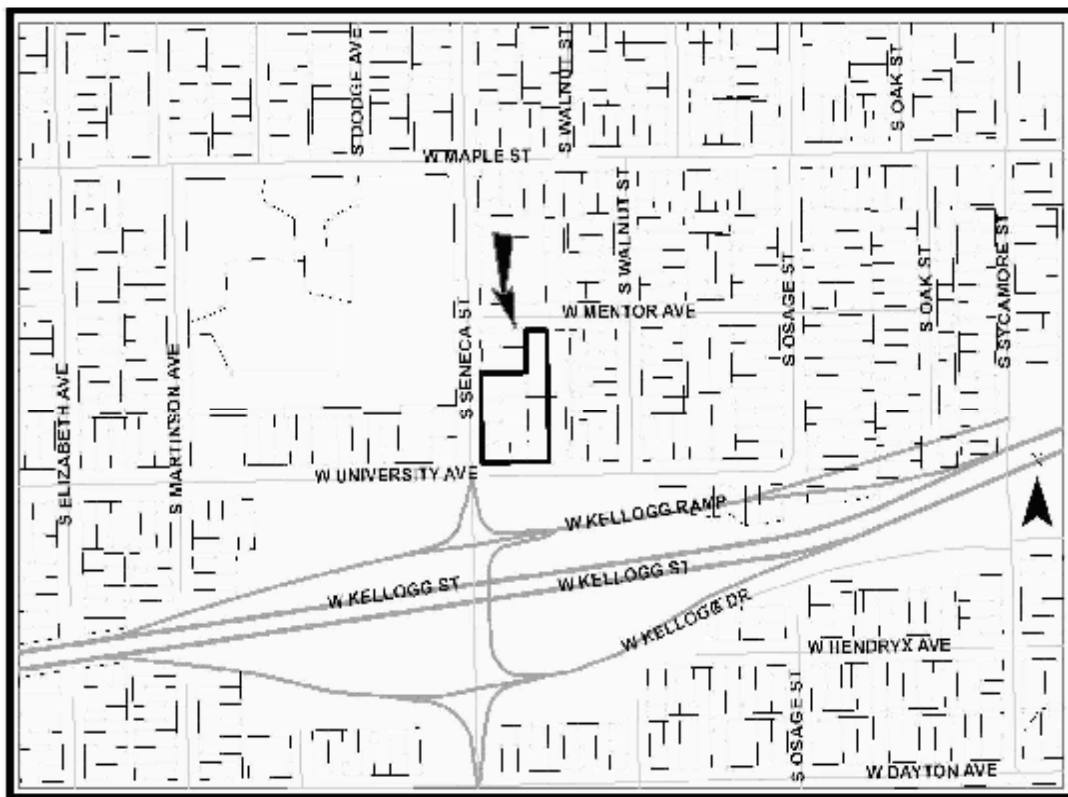
SUBJECT: ZON2010-00029 – City zone change from SF-5 Single-Family Residential (“SF-5”), TF-3 Two-Family Residential (“TF-3”) and MF-18 Multi-Family Residential (“MF-18”) to LC Limited Commercial (“LC”); generally located on the northeast corner of Seneca Street and University Avenue. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve, unanimously (9-0).

MAPD Staff Recommendation: Approve.



Background: The applicants request LC Limited Commercial (“LC”) zoning on the platted subject site. The multiple lots on the site are currently zoned SF-5 Single-Family Residential (“SF-5”), TF-3 Two-Family Residential (TF-3”) and MF-18 Multi-Family Residential (MF-18”). The site is located in the Delano Neighborhood Overlay District. The Delano Neighborhood Overlay District provides a list of prohibited uses, and those that can be considered by a Conditional Use, as well as design guidelines (including the Seneca Boulevard Enhancements) and review procedures to ensure the redevelopment of the property will conform to the neighborhood. Access to and from the site will be as permitted by the Traffic Engineer.

The site is located on the northeast corner of Seneca Street and University Avenue, immediately north of the Kellogg Street/US 54 and Seneca Street interchange. The lots on this site with Seneca Street frontage are vacant, while two single-family residences (built 1920) remain on the east/back two lots. There are SF-5 zoned lots with single-family residences (built 1880 to 1940) abutting the north, east and west sides of the site. Those properties located east of the site are part of a mostly single-family residential neighborhood that is located south of Maple, north of Kellogg and east to Sycamore Street. North of the subject site, across Mentor Street with frontage on Seneca Street, is a vacant (until recently the Cooper Cue Pool Hall) LC zoned building and a GC General Commercial (“GC”) zoned motorcycle repair and sales business. West of the site, across Seneca Street, is the B Multi-Family Residential (“B”) and MF-29 Multi-Family Residential (“MF-29”) zoned Kansas Masonic Home, which is on the Wichita Register of Historic places.

Analysis: At the MAPC meeting held on August 19, 2010, the MAPC voted (9-0) to recommend approval of the request for LC zoning. There was a member of the general public who spoke against the requested zoning at the MAPC meeting. The neighbor expressed concern regarding the impact the proposed development might have on the remaining residences. However, no valid protests were received at the end of the two-week protest period, thus the request can be considered as a consent item.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading.

Attachments: Ordinance, MAPC minutes.

ORDINANCE NO. 48-848

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00029

Zone change from SF-5 Single-Family Residential (“SF-5”), TF-3 Two-Family Residential (“TF-3”), and MF-18 Multi-Family Residential (“MF-18”) to LC Limited Commercial (“LC”) on property described as:

The East 60 feet of Lot 2, and the East 8 feet of the alley adjacent Block 6, The South 75 feet of the West 150 feet of Lot 2 and the West 8' for alley adjacent except the West 7.5 feet for road, Block 6, The North 70 feet of the West 150 feet of Lot 3 except the West 7.5 feet deeded to the city for street and the West 8 feet of the alley adjacent, Block 6, The North 65 feet of the South 130 feet of the West 150 feet except the West 7.5 feet thereof and the West 8 feet of alley adjacent, Block 6, The South 65 feet of the West 100 feet of Lot 3 except the West 7.5 feet deeded to the city for street, Block 6, The East 50' of the South 65 feet of the West 150 feet of Lot 3 and the West 8 feet of the alley adjacent, Block 6, all in Lawrence's Addition to West Wichita, Sedgwick County, Kansas.

AND

The East 60 feet of Lot 3 and the East 8 feet of alley adjacent, Block 6, in Lawrence's Addition to West Wichita, Sedgwick County, Kansas, generally located on the northeast corner of Seneca Street and University Avenue.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Carl Brewer - Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney

**EXCERPT OF THE AUGUST 19, 2010 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING HEARING**

Case No.: ZON2010-29 - Kellogg – Seneca LLC and Nathan D. Wilkey (applicants) /Poe & Associates, c/o Tim Austin (agent) request a city zone change from SF-5 Single-Family Residential, TF-3 Two-Family Residential and MF-18 Multi-Family Residential to LC Limited Commercial.

The East 60 feet of Lot 2, and the East 8 feet of the alley adjacent Block 6, The South 75 feet of the West 150 feet of Lot 2 and the West 8' for alley adjacent except the West 7.5 feet for road, Block 6, The North 70 feet of the West 150 feet of Lot 3 except the West 7.5 feet deeded to the city for street and the West 8 feet of the alley adjacent, Block 6, The North 65 feet of the South 130 feet of the West 150 feet except the West 7.5 feet thereof and the West 8 feet of alley adjacent, Block 6, The South 65 feet of the West 100 feet of Lot 3 except the West 7.5 feet deeded to the city for street, Block 6, The East 50' of the South 65 feet of the West 150 feet of Lot 3 and the West 8 feet of the alley adjacent, Block 6, all in Lawrence's Addition to West Wichita, Sedgwick County, Kansas.

AND

The East 60 feet of Lot 3 and the East 8 feet of alley adjacent, Block 6, in Lawrence's Addition to West Wichita, Sedgwick County, Kansas, generally located on the northeast corner of Seneca Street and University Avenue.

BACKGROUND: The applicants request LC Limited Commercial (“LC”) zoning on the platted subject site. The multiple lots of the site are currently zoned SF-5 Single-Family Residential (“SF-5”), TF-3 Two-Family Residential (TF-3”) and MF-18 (MF-18”) Multi-Family Residential. The site is located in the Delano Neighborhood Overlay District (Delano).

The site is located on the northeast corner of Seneca Street and University Avenue, immediately north of the Kellogg Street/US 54 interchange. Those lots (site) with Seneca frontage are vacant, while two single-family residences (built 1920) remain on the east/back two lots. There are SF-5 zoned lots with single-family residences (built 1880 – 1940) abutting the north, east and west sides of the site. Those properties located east of the site are part of a mostly single-family residential neighborhood that is located south of Maple, north of Kellogg and east to Sycamore Street. North of the subject site, across Mentor Street with frontage on Seneca, is a vacant (until recently the Cooper Cue Pool Hall) LC zoned building and a GC General Commercial (“GC”) zoned motorcycle repair and sales business. West of the site, across Seneca Street, is the B Multi-Family Residential (“B”) and MF-29 Multi-Family Residential (“MF-29”) zoned Kansas Masonic Home, which is on the Wichita Register of Historic places.

CASE HISTORY: The subject properties were originally platted as Lots 2 and 3, Block 6, the Lawrence Addition to West Wichita, which was recorded September 8, 1884. Through the years the lots were subsequently split into multiple properties by sale. The site is located in the Delano Neighborhood Overlay District, which was approved by the City Council March, 2001 (Ord. #44-896) and the County Commission March 7, 2001 (Res. #35-01).

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5, LC, GC	Single-family residences, vacant building, motorcycle repair and sales
SOUTH:	Kellogg/US 54	
EAST:	SF-5, TF-3	Single-family residences
WEST:	B, MF-29	Kansas Masonic Home

PUBLIC SERVICES: At this location Seneca Street is a four-lane arterial, with 37.5 feet of half-street right-of-way; the abutting northern property and the adjacent western properties have 45 feet of half-street right-of-way. This portion of Seneca is designed as a Boulevard with a raised, full curbed median strip, planted with deciduous trees and grass; the Delano Neighborhood Overlay District calls for Seneca to be designed as a Boulevard from Texas Street to Kellogg. The raised median limits access to and out of the site from Seneca to right in and right out. The site also has access to Mentor and University Avenues, residential streets with 80 feet of right-of-way. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as “Urban Residential.” The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category.

As shown on a 1997 aerial, there were four single-family residences and one vacant lot along the site’s Seneca Street frontage. Beginning in 2003, all of those single-family residences were removed and today the properties remain vacant. The site’s immediate proximity to the Seneca – Kellogg/US 54 highway interchange has made these properties less desirable for single-family residential development. If the zoning is approved there will be two remaining SF-5 zoned properties on Seneca between Maple Street and Kellogg/US 54; the two properties abutting the site’s north and west sides. There is multi-family zoning along this portion of Seneca, all of it being in the Kansas Masonic Home site. The requested zoning is not in compliance with the 2030 Land Use Guide, but it is not contrary to existing zoning patterns along this portion of Seneca, where it intersects with arterials. The LC zoning would allow all types of residential development, plus office and retail, which would present more opportunities for this site to be redeveloped. The Delano Neighborhood Overlay District provides a list of prohibited uses and those that can be considered by a Conditional Use, as well as design guidelines (including the Seneca Boulevard Enhancements) and review procedures to ensure the redevelopment of the property will conform to the neighborhood.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for LC Limited Commercial (“LC”) zoning be APPROVED, subject to:

- (1) All design and development standards and review procedures of the Delano Neighborhood Overlay District, including (but not limited to): (a) The Seneca Boulevard Enhancements standards, and; (b) Retaining the Delano Neighborhood Overlay District’s list of prohibited uses and those that can be considered by a Conditional Use, and; (c) Dedication of any needed right-of-way along the site’s Seneca Street frontage.
- (2) All applicable zoning, building, fire, health codes or licensing requirements.
- (3) Access will be as permitted by the Traffic Engineer.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The site is located on the northeast corner of Seneca Street and University Avenue, immediately north of the Kellogg Street/US 54 interchange. Those lots (site) with Seneca frontage are vacant, while two single-family residences (built 1920) remain on the east/back two lots. There are SF-5 zoned lots with single-family residences (built 1880 – 1940) abutting the north, east and west sides of the site. Those

properties located east of the site are part of a mostly single-family residential neighborhood that is located south of Maple, north of Kellogg and east to Sycamore Street. North of the subject site, across Mentor Street with frontage on Seneca, is a vacant (until recently the Cooper Cue Pool Hall) LC zoned building and a GC General Commercial (“GC”) zoned motorcycle repair and sales business. West of the site, across Seneca Street is the B Multi-Family Residential (“B”) and MF-29 zoned Multi-Family Residential (“MF-29”) Kansas Masonic Home, which is on the Wichita Register of Historic places.

2. The suitability of the subject property for the uses to which it has been restricted: The site’s immediate proximity to the Seneca – Kellogg/US 54 highway interchange has made these properties less desirable for single-family residential development. The two properties zoned multi-family could be developed as small apartments (possible use by students attending Friends University), although the requested LC zoning would allow all types of residential development, as well as retail and office, thus offering more opportunities for redevelopment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The LC zoning would allow all types of residential development, plus office and retail, which would present more opportunities for this site to be redeveloped. The Delano Neighborhood Overlay District provides a list of prohibited uses and those that can be considered by a Conditional Use, as well as design guidelines (including the Seneca Boulevard Enhancements) and review procedures to ensure the redevelopment of the property will conform to the neighborhood.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Allowing the LC zoning would allow all types of residential development, as well as retail and office, thus offering more opportunities for redevelopment of vacant land, which, at this location, will not impose a lose to the public health, safety and welfare.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: As shown on a 1997 aerial, there were four single-family residences and one vacant lot along the site’s Seneca Street frontage. Beginning in 2003, all of those single-family residences were removed and today the properties remain vacant. The site’s immediate proximity to the Seneca – Kellogg/US 54 highway interchange has made these properties less desirable for single-family residential development. If the zoning is approved there will be two remaining SF-5 zoned properties on Seneca between Maple Street and Kellogg/US 54; the two properties abutting the site’s north and west sides. There is multi-family zoning along this portion of Seneca, all of it being in the Kansas Masonic Home site. The requested zoning is not in compliance with the 2030 Land Use Guide, but it is not contrary to existing zoning patterns along this portion of Seneca, where it intersects with arterials. The LC zoning would allow all types of residential development, plus office and retail, which would present more opportunities for this site to be redeveloped. The Delano Neighborhood Overlay District provides a list of prohibited uses and those that can be considered by a Conditional Use, as well as design guidelines (including the Seneca Boulevard Enhancements) and review procedures to ensure the redevelopment of the property will conform to the neighborhood.
6. Impact of the proposed development on community facilities: Impact on community facilities will be minimal.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MCKAY expressed concern regarding the Kellogg and Seneca interchange and asked if the property would be platted?

LONGNECKER explained since the area is already platted, staff is not asking for it to be replatted.

MCKAY asked about exits from the property onto Seneca and University.

LONGNECKER said Traffic Engineering will approve traffic flow from the site.

TIM AUSTIN, POE & ASSOCIATES, AGENT FOR THE APPLICANT said they are in agreement with staff comments. He added that Seneca is a heavily traveled arterial and that traffic counts in 2008 reflected 23,000 vehicles and that there has been a constant growth pattern from Hayesville up to downtown Wichita since then. He said many of the single-family residences along the street have been converted to commercial uses.

FORA FARAJPANAHI, 1048 MURRAYCOURT voiced concern about the proposal stating that the Delano Plan advocated residential use in this area. She said this is a middle income neighborhood where families have improved their property. She mentioned gang activity at the Copper Cue and said this is not the type of development that this area wants. She mentioned that many Masonic home older residents walk the area in the evening. She said she understood that some of the homes were acquired and burnt down so the property would become vacant.

AUSTIN commented that both homes left on the property have been vacant for a while, and were rental properties.

CHAIRMAN VAN FLEET asked the intended use for the area.

AUSTIN said they don't have a specified use yet, but added that the highest and best use for this area would be as commercial property. He said the Delano Overlay is very stringent in limiting uses for commercial properties in this district. He said the Plan establishes design criteria, setbacks, parking, and how close buildings can be to residential property.

CHAIRMAN VAN FLEET commented then residential use is not in the future for this property.

AUSTIN responded at least not single-family residential.

FOSTER asked **AUSTIN** to review some of the uses excluded under the Delano Overlay.

AUSTIN clarified prohibited uses listed in the Delano Overlay. He also mentioned those items that would require MAPC approval as a Conditional Use permit in the area.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **DOWNING** seconded the motion, and it carried (9-0).

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: SUB2010-00029 -- Plat of USD 259 5th Addition located north of Pawnee and on the west side of 143rd Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: The site, consisting of one lot on 81.66 acres, has recently been annexed into Wichita's city limits and is zoned SF-5 Single-family Residential.

Analysis: The applicant has submitted a 100 percent Petition and a Certificate of Petition for traffic improvements. The applicant has also submitted a Restrictive Covenant to provide for maintenance of the reserves and a Temporary Turnaround Dedication.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

Financial Considerations: None.

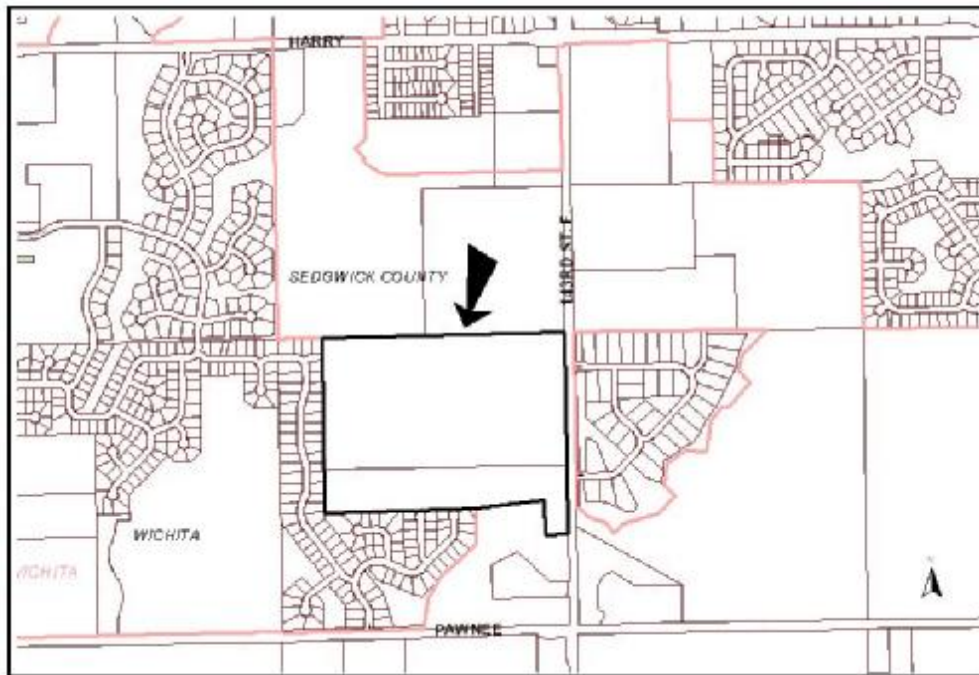
Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petition, Restrictive Covenant and Temporary Turnaround Dedication have been reviewed and approved as to form by the City's Law Department.

The Certificate of Petitions, Restrictive Covenant and Temporary Turnaround Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Attachments: Certificate of Petitions
Restrictive Covenant
Temporary Turnaround Dedication



First Published in the Wichita Eagle on October 1, 2010

RESOLUTION NO. 10-264

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING DECEL LANE IMPROVEMENTS IN 143RD ST. EAST AND A LEFT TURN LANE IN 143RD ST. EAST TO SERVE THE MAJOR ENTRANCE TO THE SUBDIVISION (NORTH OF PAWNEE, WEST OF 143RD ST. EAST) 472-84939 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING DECEL LANE IMPROVEMENTS IN 143RD ST. EAST AND A LEFT TURN LANE IN 143RD ST. EAST TO SERVE THE MAJOR ENTRANCE TO THE SUBDIVISION (NORTH OF PAWNEE, WEST OF 143RD ST. EAST) 472-84939 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing decel lane improvements in 143rd St. East and a left turn lane in 143rd St. East to serve the major entrance to the subdivision (north of Pawnee, west of 143rd St. East) 472-84939 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to One Hundred Twenty-Nine Thousand Dollars (\$129,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2010, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

USD 259 5TH ADDITION

Lot 1, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, USD 259 5TH ADDITION, shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or

tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of September, 2010.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

First Published in the Wichita Eagle on October 1, 2010

RESOLUTION NO. 10-265

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING TRAFFIC SIGNALIZATION DEVICE TO SERVE THE MAJOR OPENING ON 143RD ST. EAST (NORTH OF PAWNEE, WEST OF 143RD ST. EAST) 472-84940 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING TRAFFIC SIGNALIZATION DEVICE TO SERVE THE MAJOR OPENING ON 143RD ST. EAST (NORTH OF PAWNEE, WEST OF 143RD ST. EAST) 472-84940 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing traffic signalization device to serve the major opening on 143rd St. East (north of Pawnee, west of 143rd St. East) 472-84940 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to One Hundred Sixty-Three Thousand Dollars (\$163,000) exclusive of the cost of interest on borrowed money, with 50 percent payable by the improvement district and 50 percent payable by the City at large. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after September 1, 2010, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

USD 259 5TH ADDITION

Lot 1, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, USD 259 5TH ADDITION, shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except

when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of September, 2010.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, Unified School District No. 259, owners of USD 259 5TH ADDITION,
Wichita, Sedgwick County, Kansas, do hereby certify that petition(s) for the following
improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Traffic Signalization Improvements
2. Left Turn Lane and Decel Lane Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or
portions thereof within the USD 259 5th Addition, may be subject to special
assessments assessed thereto for the cost of constructing the above-described
improvements.

Signed this 27th day of August, 2010.



Mike Willome

Unified School District No. 259

By: *Connie Dietz*
Connie Dietz, President

Certificate of Petition
Page 2 of 2

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

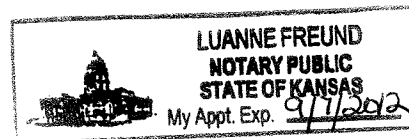
BE IT REMEMBERED, that on this 27th day of August, 2010,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came Connie Dietz, President of Unified School District No. 259, personally
known to me to be the same persons who executed the within instrument of writing
and such persons duly acknowledged the execution of the same on behalf, and as the
act and deed of said school district.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.


Notary Public

(My Appointment Expires: 9/7/2012)

Approved as to form:



Gary E. Rebenstorf, City Attorney

RESTRICTIVE COVENANT

THIS DECLARATION made this 27th day of August, 2010, by Unified School District No. 259, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

USD 259 5TH ADDITION
Lot 1, Block A

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A" and "B", USD 259 5th Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is reserved for open space, landscaping, lakes, berms, floodplain and floodway, drainage purposes, and utilities as confined to easements. No buildings shall be constructed or placed on or within said floodway, nor shall any fill, change of grade, creation of channel, or any other work be carried on without the permission of the Engineer for the appropriate governing body.

Reserve "B" is reserved for open space, landscaping, lakes, berms, floodplain, drainage purposes, and utilities as confined to easements.

2. Reserves "A" and "B", shall be owned and maintained by the owner of Lot 1, Block A.

3. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Lot Owner, as may be appropriate, has failed to maintain the reserves in a reasonable and prudent manner.

and,

B. That the appropriate governing body has given written notice to the Declarant or the Lot Owner and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Lot Owner shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against Lot 1, Block A, in USD 259 5th Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in Lots in USD 259 5TH ADDITION, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

Unified School District No. 259

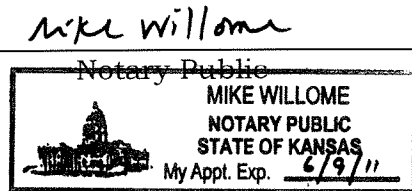
By: Connie Dietz
Connie Dietz, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2010,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came Connie Dietz, President of Unified School District No. 259, personally
known to me to be the same persons who executed the within instrument of writing
and such persons duly acknowledged the execution of the same on behalf, and as the
act and deed of said school district.

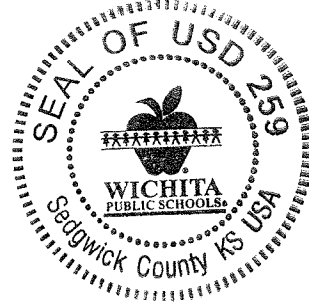
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.

(My Appointment Expires: 6/9/11)



Approved as to form:

Gary E. Rebenstorf, City Attorney



TEMPORARY TURNAROUND DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Unified School District No. 259, being the owner of the following described real estate in Sedgwick County, Kansas, to wit:

That part of Lot 1, Block A, USD 259 5th Addition, Wichita, Sedgwick County, Kansas described as follows: Beginning at a deflection corner in the west line of Lot 1 in said Block A, said deflection corner also being the northeast corner of Lot 44, Block 3, Sierra Hills 2nd Addition, Wichita, Sedgwick County Kansas; thence N00°01'25"E along the west line of Lot 1 in said Block A, 64.02 feet to a deflection corner in the west line of Lot 1 in said Block A, said deflection corner also being the southeast corner of Lot 1, Block 4, in said Sierra Hills 2nd Addition; thence N00°01'09"W along the west line of Lot 1 in said Block A, 12.99 feet; thence S89°58'35"E, 30.01 feet; thence S00°01'25"W, 90.00 feet; thence N89°58'35"W, 30.00 feet to a point on the west line of Lot 1 in said Block A; thence N00°00'44"E along the west line of Lot 1 in said Block A, 12.99 feet to the point of beginning.

do hereby dedicate the above-described real estate to the public for temporary turnaround purposes. Said temporary turnaround dedication shall expire upon redevelopment of the property, re-platting of the property, or construction of a permanent easement.

Executed this 27th day of August, 2010.

Unified School District No. 259

By: Connie Dietz
Connie Dietz, President

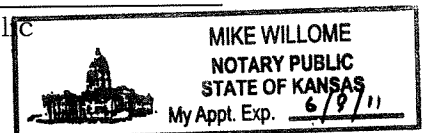
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of August, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Connie Dietz, President of Unified School District No. 259, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said school district.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

(My Appointment Expires: 6/9/11)

Mike Willome
Notary Public



Approved as to form:

Gary E. Rebenstorf, City Attorney



City of Wichita
City Council Meeting
September 28, 2010

TO: Wichita Airport Authority

SUBJECT: Agreement – U.S. Department of Agriculture, Animal and Plant Health
Inspection Service, Wildlife Services

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: In December 2000, the Wichita Airport Authority (WAA) entered into a service agreement with the U. S. Department of Agriculture-Wildlife Services (USDA) to provide wildlife management services at Mid-Continent Airport and Colonel James Jabara Airport. This Agreement Work Plan/Financial Plan has been renewed on an annual basis since the original agreement date. The Work Plan consists of the following services: assessing/monitoring biological conditions necessary to track seasonal and yearly changes in wildlife populations; provide training to airport staff; provide wildlife hazing and habitat management; and apply for and maintain required permits.

Analysis: Through this Agreement, the WAA complies with its obligations to the Federal Aviation Administration under 14 CFR Part 139.337-*Wildlife Hazard Management*, the Airport Certification Manual, and the Airport Wildlife Hazard Management Plan, all of which are mandatory federal compliance programs as a condition for maintaining the Airport Operating Certificate.

Financial Considerations: The cost of the services provided is \$50,000 for the period October 1, 2010 through September 30, 2011. This amount reflects a decrease of \$1,720 below the 2009/2010 contract amount or a three percent decrease under last year. The funds for this program are included in the Airport Operating Budget.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through Maintaining Safe, Efficient and Economical airport services to serve the community.

Legal Considerations: The Law Department has approved the Agreement as to legal form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

Attachments: The Agreement Work Plan/Financial Plan.

Work Plan/Financial Plan

COOPERATOR: Wichita Airport Authority
Victor D. White, Director of Airports, (316) 946-4700

COOPERATIVE AGREEMENT NO.: 11-73-20-5303RA

ACCOUNTING CODE No.: 173-7320-377

LOCATION: Mid-Continent Airport Wichita Kansas

DATES: October 1, 2010 to September 30, 2011

OBJECTIVES/GOALS:

For United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife services (WS) to continue to collect biological assessment information, provide periodic wildlife damage management training to Wichita Airport Authority (WAA) personnel and assist Airfield Operations and Maintenance by responding directly to known wildlife nuisances and hazards. Specific actions requested: a) assess/monitor biological conditions on Mid-Continent Airport to track seasonal and yearly changes in wildlife population indices, b) provide periodic training to WAA personnel to meet FAA requirements and identify, document, and address wildlife hazards, c) provide direct control of nuisance and hazardous wildlife using hazing (harassment), trapping, shooting and other management tools as appropriate, and d) assist the WAA in maintaining appropriate State and Federal depredation permits.

PLAN OF ACTION:

WS personnel will conduct all activities within the above-delineated areas. WS will coordinate all activities with the appropriate WAA personnel. WAA will be responsible for designating WS points of contact, approving WS activities, and providing the appropriate clearances needed to complete the stated objectives/goals. The project will be supervised by the State Director for Kansas or his designated representative.

One specialist will be assigned to the project for approximately 32 hours per week. Work hours will vary and will be scheduled to most appropriately address wildlife damage management problems. WS may utilize all practical and legal wildlife management techniques.

COST ESTIMATE FOR SERVICES October 1, 2010 to September 30, 2011

Salary/Benefits	35,770
Lodging/Per Diem	1,000
Transportation (9,600 miles @ .55/mile)	5,280
Supplies	1,000
SUBTOTAL	<u>43,050</u>
Program Support @ 16.15% of Subtotal	6,950
TOTAL	<u>\$50,000</u>

Billing will be done quarterly. Costs are estimated and may vary according to changing needs.

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS/WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days must be forwarded to debt collection centers or commercial collection agencies for more aggressive action.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
By direction of the Wichita Airport Authority

By: _____
Karen Sublett, City Clerk

By: _____
Carlos Brewer, President

By: _____
Victor D. White, Director of Airports

APPROVED AS TO FORM: _____ Date: _____
Director of Law

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES

By: _____
State Director, Kansas

Date: _____

By: _____
Director, Western Region

Date: _____

**City of Wichita
City Council Meeting
September 28, 2010**

TO: Wichita Airport Authority

SUBJECT: Learjet, Inc. – Supplemental Agreement No. 3

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: Learjet leases property from the Wichita Airport Authority (WAA) for the purposes of fuel farm, paint and customer service facilities on Mid-Continent Airport. Learjet is now desirous of extending the agreement for the original customer service facility, 153,600 sq. ft. building, which was constructed and leased in 1980. In 1995, Learjet expanded the facility by 29,600 sq. ft. The land rental rates for the customer service facility were established in the agreement and then were modified by supplement dated December 16, 2003. In addition, the agreement allows for three, ten-year options, which includes facility rent to be set at 50% of the fair market rental value. In December 2000, both parties agreed that the first, ten-year lease option to renew on the original facility should be exercised. Learjet would like to exercise the second, ten-year lease option, effective July 1, 2010.

Analysis: When new facilities are constructed on the airport, the WAA enters into a land lease with the tenant. The term of a lease agreement generally coincides with the amortization of bonds used to finance the construction of the facility. During the time the facility is being paid for, only land rent is paid to the WAA. In most instances options to renew are included within the original agreement, with the provision that when the option is extended that, in addition to land rent, facility rent will be charged. The initial agreement with Learjet was through July 1, 2000. The first ten-year option was exercised by supplement dated December 12, 2000 that extended the terms and started the facility rent. The second, ten-year option will be for the period of July 1, 2010 through June 30, 2020.

Financial Considerations: Facility leases are determined by an independent broker's opinion or an appraisal, both of which are provided by the Martens Appraisal. The recommended rates are based upon a review of comparable facilities in the community. Based upon an appraisal prepared by Martens Appraisal, the market conditions in the airport vicinity and the negotiation between the parties, the current market lease rental value for the customer service facility will remain at \$4.75 per sq. ft., which sets the 50% facility rental rate at \$2.37 per sq. ft. for the period of July 1, 2010 through June 30, 2015. Beginning July 1, 2015, the facility rent will be set by an independent appraiser and calculated at the rate of 50% fair market rental value for the remaining five-year period. As set out in the original agreement, the facility rent for the 1995 Expansion will begin July 1, 2015 at 100% of the fair market rental value determined by an independent appraiser. Therefore, the current, combined annual revenue for facility rent and land rent to the WAA is \$417,300, which represents a one percent increase compared to last year.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through negotiating agreements which allow Mid-Continent's airport partners to continue their operations on the airport; which, in turn, generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve Supplemental Agreement No. 3, and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3

By and Between

WICHITA AIRPORT AUTHORITY

and

LEARJET INC.

for

Use Of Land – Wichita Mid-Continent Airport

THIS SUPPLEMENTAL AGREEMENT NO. 3 is entered into this September 28, 2010, between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas, hereinafter referred to as the LANDLORD; and LEARJET INC., hereinafter referred to as the TENANT.

WHEREAS, the parties hereto have heretofore entered into a Bond Lease Agreement dated July 1, 1980 (the "Agreement") for the purpose of leasing land and constructing a customer service facility ("Facility") thereon, as each are more fully described in the Agreement; and

WHEREAS, the parties later entered into a Supplemental Lease dated April 3, 1995, for the purpose of constructing additional improvements on the land described in the Agreement, and a subsequent Bond Lease Agreement dated December 1, 1995 for the purpose of issuing bonds to pay the costs of constructing the additional improvements on such land; and

WHEREAS, the parties thereafter entered into a Supplemental Agreement No. 1 dated December 12, 2000, for the purpose of exercising the first of TENANT's three options for successive terms of ten (10) years each (as set forth in the Agreement) to extend the Agreement and set out facility and land rental during such option period; and

WHEREAS, on December 16, 2003, the parties entered into a Supplemental Agreement No. 2, which modified the ground rental rates for the remainder of the unexpired first option

term, and prospectively set the ground rental rates to be applicable in the TENANT's second and third options, if exercised; and

WHEREAS, the parties hereto are now desirous of further amending the Agreement for the purpose of exercising the second of TENANT's three options for successive terms of ten (10) years each (as set forth in the Agreement) and to establish and set forth the parties' agreement with respect to the Facility and ground rental rates during such second option period.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties agree as follows:

1. Term

TENANT hereby exercises the second of TENANT's three options for successive terms of ten (10) years each, as provided in the Agreement. The term of this second option is July 1, 2010 through June 30, 2020 (the "Second Option Term").

2. Facility Rental

As set out in Section 16.1 of the Agreement, Facility rent during the option periods is determined as set forth in Schedule II of the Agreement, which establishes Facility rent at 50% of the then current market lease rental value of the facility (excluding land), as determined by an independent appraiser mutually selected by the Landlord and Tenant. As set out in Section 2 of the Supplemental Agreement No. 1, the market lease rental value was \$4.75 per square foot during the first option term, which set the Facility rent (fifty percent (50%) of the market value) at \$2.375 per square foot. The annual rental amount for the Facility during the first option term was \$364,800.00 per year, or \$30,400.00 per month.

The parties hereby agree that the Facility rent payable during the first option period shall remain and continue for the next period of five (5) years, effective July 1, 2010 through June 30, 2015, of the Second Option Term. Accordingly, for this initial five (5) year period of the Second Option Term, the Facility rent shall continue at \$2.375 per square foot, for an annual rental amount of \$364,800.00, or \$30,400.00 per month.

Facility rental for the remaining five (5) year period of the Second Option Term, beginning July 1, 2015, shall be set and determined at the rate of 50% of the then current market lease rental value of the Facility (excluding land), to be determined by an independent appraiser mutually selected by the Landlord and Tenant, as set forth in the Agreement. The parties agree that such appraisal will be conducted and Facility rental will therefore be determined in the second calendar quarter of 2015.

As set out in Section 3 of the 1995 Supplemental Lease, effective July 1, 2015, Tenant shall be required to pay rental on the 29,600 sq. ft. 1995 Facility Addition, at 100% of the then-current market value of the 1995 Facility Addition (excluding land), as determined by an independent appraiser mutually selected by the Landlord and Tenant. Rental for use of the 1995 Facility Addition, commencing July 1, 2015, will therefore be determined in the second calendar quarter of 2015.

Facility and land rent is payable in advance on the first day of each month.

3. Land Rent

This Supplemental Agreement No. 3 shall not change the land rent during the Second Option Term, as the land rent amounts payable during the Second Option Term shall continue as set out in the 2003 Supplemental Agreement No. 2, Section 1, "Land Rent."

4. Other Terms

It is understood and agreed that all other terms and conditions of any and all existing Agreements and Supplements between the parties hereto and respecting the Facility shall remain in full force and effect.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS


By _____
Karen Sublett, City Clerk


By _____
Carl Brewer, President
"Landlord"

By _____
Victor D. White, Director of Airports

ATTEST:

LEARJET, INC.

By  _____
Donald R. Pufahl
Director of Finance & Treasurer

By  _____
Anne Beaurivage
General Counsel & Secretary
"Tenant"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

City of Wichita
City Council Meeting
September 28, 2010

TO: Wichita Airport Authority

SUBJECT: Allegiant Non-Signatory Airline
Airport Use & Lease Agreement

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: Allegiant Airlines (Allegiant) began providing non-stop service between Las Vegas and Wichita Mid-Continent Airport in 2003. Currently, Allegiant has flights to and from Las Vegas, Phoenix Gateway and Los Angeles. In order to operate at the airport, an airline must have either a signatory use agreement, a non-signatory use agreement or be handled by a signatory airline. In the past, Allegiant's flights and ground handling operations were handled by a signatory airline, which were United Airlines and American Airlines. Allegiant is now desirous of entering into a non-signatory use agreement with Wichita Airport Authority (WAA).

Analysis: A non-signatory airline use agreement authorizes an airline to operate at the airport on a scheduled basis without having to lease space at the airport. However, a non-signatory airline will incur 25% higher fees and charges compared to a signatory airline as well as any per turn charges accrued for the unleased ticket counter and holdroom areas. In the past, Allegiant Airlines provided service through an agreement with a signatory airline. The signatory airline collected the non-signatory fees and in turn paid the WAA. As a non-signatory airline, Allegiant will communicate and report directly with WAA. In addition, this non-signatory agreement will require Allegiant to provide a certificate of insurance.

Financial Considerations: No impact to the Wichita Airport Authority.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through developing agreements, which to enhance service to the public and have a positive economic impact on the airport and the community.

Legal Considerations: The Law Department has approved the Agreement as to legal form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

Attachments: The Agreement.

NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT (09-28-10)

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

ALLEGiant AIR, LLC

FOR

WICHITA MID-CONTINENT AIRPORT

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NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT

BETWEEN

WICHITA AIRPORT AUTHORITY

AND

ALLEGIANT AIR, LLC

THIS AGREEMENT, made and entered into this January 1, 2010, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas (hereinafter referred to as "Authority") and ALLEGIANT AIR, a limited liability corporation organized and existing under and by virtue of the laws of the State of Nevada (hereinafter referred to as "Airline") acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors;

WITNESSETH:

WHEREAS, Authority owns and operates the Wichita Mid-Continent Airport (hereinafter referred to as "Airport"); and

WHEREAS, Authority has the right to lease and license the use of property on Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is a corporation primarily engaged in the business of air transportation by aircraft for the carriage of persons, property, and mail; and

WHEREAS, Airline desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation System, and Authority is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties hereto is to enter into an agreement which will more definitively specify the rights and obligations of the parties with respect to the operation of Airport by Authority and the use and occupancy of Airport by Airline, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, Authority and Airline for, and in consideration of, the covenants and mutual agreements hereinafter contained, do hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 - Definitions

The following words, terms and phrases wherever used in this Agreement shall, for the purposes of this Agreement, have the following meanings:

Affiliate shall mean an Air Transportation Company that (1) shares a reservation code with or is a wholly-owned subsidiary of Airline or otherwise under contract with Airline, and (2) operates under essentially the same trade name at the Airport, and (3) uses essentially the same livery as Airline, and (4) is a part of and feeds into the Airline's connection system.

Agreement shall mean this Non-Signatory Airline Airport Use and Lease Agreement between Authority and Airline, as the same may be amended from time to time.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft Parking Apron shall mean that part of Ramp Area immediately adjacent to Terminal that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit "B" attached hereto.

Airfield shall mean those portions of Airport provided for the landing, take-off and taxiing of aircraft, including without limitation approach and turning zones, aviation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.

Airline Premises shall mean Exclusive Use Premises, Preferential Use Premises and Joint Use Premises as hereinafter defined.

Airport shall mean the Wichita Mid-Continent Airport owned and operated by The Wichita Airport Authority, the current boundaries of which are shown on Exhibit "A" attached hereto.

Airport System shall mean Wichita Mid-Continent Airport and Colonel James Jabara Airport.

Air Transportation System shall mean that system operated by Airline for the commercial transportation of persons, property and mail by air.

Director shall mean the Director or Acting Director of Airports, and shall include such person or persons as may from time to time be authorized in writing by the Director to act for the Director with respect to any or all matters pertaining to this Agreement.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer revenue passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to Airline for its exclusive use as shown on Exhibit "B," attached hereto, as such may be amended from time to time.

Gate Position shall mean Airline's passenger gate(s), including Airline's Aircraft Parking Apron, holdroom, passenger loading bridge(s), if any, and appurtenant furnishings in and about the Terminal that are reasonably necessary for the use thereof; provided, however, Gate Position shall specifically exclude any space leased by Airline under the Terminal concourses.

Host Airline shall mean a Signatory Airline accommodating an Affiliate within its Airline Premises.

Joint Use Premises shall mean those Terminal areas assigned to two or more Scheduled Air Carriers, as shown on Exhibit "B," attached hereto.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated by Airline is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Non-Participating Airline shall mean an Air Transportation Company which does not have an Agreement with the Authority for use of the Airport in the provision of commercial air transportation services.

Non-Revenue Landing shall mean any aircraft landing by Airline at Airport for which Airline receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any airline using the Airport which executed a Non-Signatory Airline Airport Use and Lease Agreement.

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s) and Authority owned passenger loading bridge(s), if any, assigned to Airline, as set forth in Section 3.1, and to which Airline shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Article XIV herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Article XIV to utilize Airline's hold rooms, loading bridges, and Aircraft Parking Apron when such use does not conflict with Airline's scheduled flight activities, including a period of forty-five (45) minutes after any of Airline's scheduled departure times and forty-five (45) minutes prior to any of Airline's scheduled arrival times and during Airline's aircraft parking overnight, or for the scheduled flight activities of an airline with which Airline has a Code Share Airline agreement, approved subleases, or handling agreements.

Ramp Area shall mean the aircraft parking and maneuvering areas adjacent to Terminal, and shall include within its boundaries all Aircraft Parking Aprons.

Requesting Airline shall mean a Scheduled Air Carrier desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from Authority.

Revenue Landing shall mean an aircraft landing by Airline at Airport in conjunction with a flight for which Airline makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Scheduled Air Carrier shall mean an Air Transportation Company performing or desiring to perform scheduled commercial air transportation service over specified routes to and from Airport, and holding any necessary authority to provide such transportation from the appropriate federal and state agencies. Affiliates of Host Airlines providing scheduled air transportation to and from Airport, together with the Host Airline, shall be considered as one Air Carrier for the sole purpose of calculating and assessing fees and charges hereunder.

Signatory Airlines shall mean those airlines which provide scheduled air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with Authority for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Terminal shall mean the airline terminal building owned and operated by Authority at Airport, as shown on Exhibit "A" hereof.

Section 1.2 – Construction

1.2.A. Additional words and phrases used in this Agreement but not defined herein shall have their usual and customary meaning.

1.2.B. Unless the context clearly indicates otherwise, words used in the singular include the plural, and words used in the plural include the singular.

ARTICLE II TERM

Section 2.1 - Initial Term

The term of this Agreement shall become effective on the Effective Date and shall continue on a month-to-month basis thereafter until terminated as provided in this Agreement.

Section 2.2 – Termination by Either Party.

This Agreement may be terminated with or without cause by either party upon not less than thirty (30) calendar days written notice to the other. In addition, (a) this Agreement may be terminated pursuant to Article X, and (b) in the event the Director determines that termination is necessary to protect the public health, safety, or welfare, this Agreement may be terminated by the Director upon such notice as the Director deems appropriate under the circumstances.

Section 2.3 – Ongoing obligations and Liabilities.

Termination of this Agreement shall not relieve the Airline of any obligations or liabilities that shall have accrued on or prior to the effective termination date. Upon the expiration or termination of this Agreement, Airline shall: (i) immediately cease all operations at the Airport; and (ii) pay in full all fees and other amounts then due and owing to Authority pursuant to the terms of this Agreement.

Section 2.4 – Airline’s Cessation of Business.

In the event that Airline ceases to operate at the Airport or fails to respond within five (5) calendar days to written notice from the Authority requesting confirmation of Airline’s intent to continue operating at the Airport, then the Director shall have the right to immediately terminate this Agreement without further notice.

ARTICLE III PREMISES

Section 3.1 - Airline Premises

3.1.A. Authority does hereby lease and demise to Airline, and Airline does hereby lease and accept from Authority, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit "B".

3.1.B. Authority and Airline may, from time to time, by written agreement, add to or delete space from Airline Premises. Authority shall not permit deletion of space unless needed by Airport for its own use or for lease to another tenant requesting such space. Exhibit "B" shall be revised as of the effective date of such additions or deletions to reflect agreed upon additions or deletions of space.

3.1.C. Notwithstanding the above Paragraph 3.1.B., Authority shall also have the right upon 30 days advance written notice or such other timeframe which may be reasonable and agreed to by Airline and Authority to relocate Airline to comparable, alternative premises that are ready for beneficial occupancy if such relocation is necessary to ensure the efficient use of all Terminal areas, with due recognition of the specific needs of each carrier, including Airline, operating at the Airport. In the event Airline is relocated, in whole or in part, appropriate changes to Exhibit "B" shall be made.

3.1.D. All space added to, or deleted from, Airline Premises pursuant to this Section 3.1 shall be subject to all the terms, conditions, and other provisions of this Agreement and Airline shall pay to Authority all rentals, fees and charges applicable to such additional Airline Premises in accordance with the terms of this Agreement.

3.1.E.(1) The Authority and Airlines recognize that the use of certain Joint Use Space as set forth in Exhibits "B" of the Agreement require ingress and egress through Airline Preferential Use Premises. Airline shall make ingress and egress to such Joint Use Space available to passengers, other Airline personnel, and Authority personnel when reasonably required for the efficient and convenient movement of passengers, personnel, and objects. In recognizing the right to such use by others, the parties agree that the Airline shall retain the reasonable and unrestricted higher and continuous priority over other users on its Preferential Use Premises.

3.1.E.(2) During the ingress and egress of Airline Preferential Use Premises by passengers, other Airline personnel and Authority personnel pursuant to this Section, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said passenger, other Airline personnel and Authority's personnel using Airline's Preferential Use Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensee, or those under its control who have come upon Airline Preferential Use Premises in connection with Airline's occupancy hereunder.

Section 3.2 - Employee Parking

Authority shall make available or cause to be developed an area or areas at the Airport as common parking facilities for personnel employed at the Terminal, including Airline personnel, subject to applicable charges for such parking facilities as set forth in Paragraph 6.4.C. herein.

Section 3.3 - Authority Fuel Facilities

Airline shall have the right to utilize the fueling facilities, equipment, and appurtenances, including the tank farm owned by the Authority, for the receiving, storing, and dispensing of aviation fuel, subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use as set forth in Paragraph 6.4.A. of this Agreement; (iii) the terms of existing agreements between the Authority and any designee operating the Authority's facilities; and (iv) the execution of a separate agreement with Authority if Airline directly utilizes the Authority fuel facilities without engaging the services of Authority or its designee.

ARTICLE IV
USE OF AIRPORT AND RELATED FACILITIES

Section 4.1 - Airline Rights and Privileges

Airline shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

4.1.A. The operation of its Air Transportation System for the carriage of persons, property and mail, including all activities reasonably necessary to such operations.

4.1.B. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of aircraft of Airline; and, in areas designated by Authority, the extended parking, servicing, loading or unloading, storage or maintenance of Airline's aircraft, subject to availability of space and to such reasonable charges and regulations as Authority may determine for areas not part of Airline Premises. Such rights shall extend to the aircraft or other equipment of any other aircraft operator with which Airline has an agreement in accordance with Article XIII.

4.1.C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, and the sale, handling, and providing of mail, freight, and express services.

4.1.D. The training at Airport of personnel in the employ of or to be employed by Airline, and the testing of aircraft and other equipment being utilized on the Airport in the operation of its Air Transportation System, provided that such training and testing is incidental to the use of Airport in the operation by Airline of its Air Transportation System, does not include flight training between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably hamper or interfere with the use of Airport and its facilities by others entitled to use of the same. In the event the number of training and testing flights by Airline exceeds ten (10) percent of Revenue Landings by Airline in any one calendar month, then Airline shall pay for such excess flights landing fee charges calculated using the then current rates established in this Agreement for Revenue Landings.

4.1.E. The sale, disposition or exchange of Airline's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein, and provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall only permit Airline to perform such functions as are incidental to the operation of its Air Transportation System. Airline shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in aircraft of others which are being used solely in the operations of Airline; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from Airline.

4.1.F. The purchase at the Airport or elsewhere, of fuels, lubricants and any other supplies and services, from any person or company, subject to paragraph 4.1.E. and to the Authority's right to require that each provider of services and/or supplies to Airline secures a permit from Authority

to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by Authority. No discriminatory limitations or restrictions shall be imposed by Authority that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and Authority.

4.1.G. The servicing by Airline, or its suppliers, of aircraft and other equipment being utilized at the Airport on Aircraft Parking Aprons or such other locations as may be designated by the Director.

4.1.H. The loading and unloading of persons, property, and mail by motor vehicles or other means of conveyance as Airline may desire or require in the operation of its Air Transportation System, at locations designated by Authority. Airline may designate the particular carrier or carriers which are legally authorized to conduct such services in the City of Wichita and which may transport Airline's employees, property, and mail to, from, and on Airport; provided, however, Authority reserves the right to require such carrier or carriers to secure a permit from Authority to conduct such activity at Airport and to abide by all reasonable rules and regulations established by Authority.

4.1.I. The installation and maintenance at its sole cost and expense of identifying signs in Airline's Exclusive Use Premises. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas; provided, however, that Authority shall permit Airline to install on the walls behind ticket counters leased by Airline, if any, identifying and company logo signs customarily installed by Airline in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation.

4.1.J. The installation, maintenance and operation of such radio, communication, computer, meteorological and aerial navigation equipment and facilities, in, on and about the Airline Premises as may be necessary or convenient in the opinion of Airline for operation of its Air Transportation System; provided, however, that the location and installation of such equipment and facilities shall require the prior written approval of Director, not to be unreasonably withheld, and further provided that the placement and type of installations authorized hereunder shall not interfere with Airport navigational aids or with similar rights granted to other tenants or governmental agencies. In the event of such interference, the Director may require removal, relocation, or modification at the sole cost of Airline to eliminate such interference.

4.1.K. Such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, pneumatic tubes, conveyer systems and power and other transmission lines in and between the Terminal and other areas of Airport. The location of such rights of way shall be designated by Director.

4.1.L. The installation of personal property, including furniture, furnishings, supplies, machinery and equipment, in Airline Premises as Airline may deem necessary or prudent for the

operation of its Air Transportation System, with title to such personal property to remain with Airline in accordance with the terms of this Agreement.

4.1.M. The construction of modifications, finishes and improvements in Airline Premises as Airline may deem necessary or prudent for the proper operation of its Air Transportation System, in accordance with Article VII of this Agreement.

4.1.N. Ingress to and egress from the Airport and Airline Premises for Airline's officers, employees, agents, invitees, passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such rights shall be subject to TSR Part 1542, and the Authority's right to establish rules and regulations governing (i) the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials and furnisher of services; provided, however, any such rules and regulations of the Authority shall not unreasonably interfere with the operation of Airline's Air Transportation System. Further, Authority reserves the right to, from time to time, temporarily or permanently restrict the use of any roadway or other area at the Airport. In the event of such restrictions, and if necessary, Authority shall ensure the availability of a reasonable equivalent means of ingress and egress.

4.1.O. The installation of a limited number of soft drink vending machines and snack vending machines, subject to the prior written approval of Director, in the non-public, Exclusive Use Premises of Airline for the exclusive use of Airline's employees and agents.

4.1.P. The rights and privileges granted to Airline pursuant to this Article IV may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by Authority to provide such services at the Airport, subject to the prior written approval of Authority and further subject to all laws, rules, regulations and fees and charges as may be applicable to the activities undertaken.

4.1.Q. Airline may, on behalf of any other Air Transportation Company or any Affiliate Airline, exercise any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation System at the Airport. This right is subject to other provisions of this Agreement with respect to Authority rules and regulations.

Section 4.2 - Exclusions and Reservations

4.2.A. Authority reserves the right to install or cause to be installed advertising and revenue generating devices, including vending machines, in Joint Use Premises; provided, however, that such installation shall not unreasonably interfere with Airline's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. Authority further reserves the right to install pay telephones in any part of Terminal. Authority shall be entitled to all income generated by such telephones and devices and to reasonable access upon Airline Premises to install or service such telephones and devices.

4.2.B. Director may prohibit the use of the Landing Area by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Landing Area as described in the current Federal Aviation Administration approved Airport Layout Plan or other engineering evaluations performed subsequent to the then current Airport Layout Plan.

4.2.C. Airline shall use its best efforts to promptly remove any of its disabled aircraft from runways, taxiways, aprons and Aircraft Parking Apron (the latter only if needed by Authority for operational purposes in accordance with Article XIV) and shall place any such disabled aircraft only in such storage areas as may be designated by Authority and may store such disabled aircraft only upon such terms and conditions as may be established by Authority. In the event Airline shall fail to remove any of its disabled aircraft as expeditiously as possible, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft at Airline's cost.

4.2.D. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

4.2.E. Airline shall not, within its reasonable control, do or permit to be done anything either by act or failure to act that shall cause the cancellation or violate the provisions of any policy of insurance for Airport, or any part thereof, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done anything either by act or failure to act that shall cause an increase in the premiums for insurance for Airport, or any part thereof, then Airline shall immediately upon demand by Director pay the amount of such increase. If such Airline act or failure to act shall cause cancellation of any policy, then Airline shall immediately upon notification by Director take such action as is necessary to cause reinstatement of said insurance.

4.2.F. The rights and privileges granted to Airline under this Article to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by Authority to fixed base operators, ground transportation carriers and other providers of services and materials.

4.2.G. No services are permitted by Airline in the Aircraft Parking Apron other than those incidental to the immediate preparation of aircraft for departure and servicing after arrival, such services to include: loading and unloading of passengers; baggage and supplies; fueling; inspection, and interior cleaning. Minor and emergency maintenance service may be performed by Airline or vendors selected by Airline only when it can be performed within the time permitted by the rules and regulations of Authority relating to the use of the Aircraft Parking Apron area.

4.2.H. Airline shall not be prohibited from providing customary in-flight catering services to its passengers and flight crews for consumption aloft.

4.2.I. Authority reserves the right to establish rules and regulations governing access of the general public, including Airline's passengers, to public areas in the Terminal; provided, however, any such rules and regulations shall not unreasonably interfere with the operation of

Airline's Air Transportation System, or alter the access rights provided for elsewhere in this Agreement.

4.2.J. The rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of Airport.

4.2.K. Any and all rights and privileges not granted to Airline in this Agreement are hereby reserved for and to Authority.

Section 4.3 – Curbside Check-In

Airline, either alone or in conjunction with other Scheduled Air Carriers or through a nominee, may provide curbside check-in. Authority will consider a vendor arrangement, in the event one or more Signatory Airlines execute a written agreement to pay for the cost of facilities and services related to curbside check-in.

ARTICLE V
MAINTENANCE AND OPERATION OF AIRPORT

Section 5.1 - General

5.1.A. Authority agrees that it (i) will with reasonable diligence prudently develop, improve, and at all times reasonably maintain and operate Airport with adequate qualified personnel and keep Airport in reasonably good repair including, without limitation, the Terminal (except as set forth in Paragraphs 5.1.B. and 5.1.C.), Landing Area, Ramp Area, and all appurtenances, facilities and services now or hereafter connected therewith as the same relate to Airline's Air Transportation System; (ii) will use its best efforts to keep Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and (iii) will develop, maintain and operate Airport in all respects in a manner at least equal to comparable United States airports of substantially similar size, use and activity except for conditions beyond the control of Authority. Notwithstanding the above, Authority shall not be responsible for snow and debris removal within the building safety line in the Terminal area. Authority shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided by Authority, whether due to mechanical breakdown or for any other causes beyond the reasonable control of Authority.

5.1.B. Airline will at all times maintain in a neat, orderly, sanitary, and presentable condition, and will provide custodial services in designated areas of Airline Exclusive Use Premises and in accordance with the maintenance and operation responsibilities provided for herein. Airline shall cause to be removed from such spaces designated herein, at Airline's own expense, all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily in its Exclusive Use Premises or in space designated by Authority in connection with collection for removal. Should Airline refuse or neglect to maintain designated areas as herein provided, Authority, upon notice to Airline providing a reasonable amount of time for Airline to remedy such problem, shall have the right to perform such maintenance on behalf of and for Airline. Any costs for such maintenance shall be paid for by Airline no later than twenty (20) days following demand by Director for such payment at Authority's costs plus twenty (20) percent.

5.1.C. Responsibilities for maintenance, cleaning and operation of facilities shall be as set forth on Exhibit "C".

ARTICLE VI RENTALS, FEES, AND CHARGES

Airline shall pay Authority rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the term of this Agreement, and shall file periodic reports as specified herein.

Section 6.1 - Landing Fee Charges and Per Turn Charges

6.1.A. Airline shall pay to Authority within twenty (20) days following the end of each calendar month, without demand or invoicing, landing fee charges for Revenue Landings for the preceding month and per turn charges, including payment for any Non-Participating Airlines handled by the Airline, at the rates and in the amount calculated in accordance with the Authority's Schedule of Fees and Charges.

6.1.B. As set out in Section 6.7.A., Airline shall provide a copy of its applicable Monthly Statistical Report (Exhibit "D") and Monthly Landed Weight/Fee Report (Exhibit "E"), showing the basis for its landing fee and per turn charges, including those of the Non-Participating Airlines.

Section 6.2 - Rentals for Exclusive Use Premises

6.2.A. Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing rentals for Airline's Exclusive Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

Section 6.3 - Rentals for Preferential Use Premises

Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing, rentals for Preferential Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

Section 6.4 - Other Charges

Other charges payable by Airline, which shall be paid by Airline to Authority within twenty (20) days following receipt by Airline of billing therefore, in addition to those specified elsewhere in this Agreement, shall be as follows:

6.4.A. Fuel Facility Charges. In the event Airline purchases or otherwise obtains fuels or lubricants pumped or processed through facilities, equipment, or appurtenances owned or operated by Authority or its designee, including the tank farm owned by Authority, then in such event Airline shall pay charges as determined by Authority's Schedule of Fees and Charges.

6.4.B. Equipment Parking Charges. Charges for apron space on which Airline parks or stores equipment utilized in the operation of Airline's air carrier operations.

6.4.C. Other Fees and Charges. In addition to the foregoing, Authority expressly reserves the right to assess and collect the following:

- (a) Airport shall have the right, pursuant to FAR Part 158, to collect and expend passenger facility charges (PFCs).
- (b) Reasonable and non-discriminatory fees for concessions and other services provided by Airline for others or for Airline by others if such services or concessions would otherwise be available from a concessionaire or licensee of Authority.
- (c) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by Authority and accepted by Airline.
- (d) Reasonable and non-discriminatory fees and charges for use of the common use areas within the Terminal.
- (e) A pro rata share of any charges for the provision of any services or facilities which Authority is required to provide by any governmental entity having jurisdiction over the Airport.
- (f) A reasonable fee for any employee parking area or areas provided at the Airport.
- (g) A reasonable fee for the use of any Authority owned property or equipment or the provision of services or facilities provided by Authority at the request of Airline.
- (h) Charges for items or activities such as badges, extraordinary electrical usage and ramp permit fees shall be assessed by Authority and paid by Airline. To the extent practical, the Authority shall directly meter electrical usage.
- (i) Any other reasonable and non-discriminatory fee or charge established by Authority from time to time.

Section 6.5 - Partial Month Charges

In the event the beginning or termination date with respect to any of the premises and facilities leased hereunder falls on any date other than the first and last days, respectively, of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month on a pro rata basis according to the number of days actually occupied during that month.

Section 6.6 - Late Payments

In the event Airline fails to make payment within twenty (20) days of the dates due as set forth in this Article VI, then Airline shall pay to Authority a monthly service charge from the date each payment was originally due equal to eighteen (18%) percent per annum on any such overdue amount, and if Airline fails to make payment within ten (10) days after written notice from Authority to Airline that such payments are late. Airline shall also pay reasonable administrative

costs and attorneys' fees incurred by Authority in attempting to obtain payment if Airline fails to make payment within thirty (30) days after written notice referenced above.

Section 6.7 - Information to be Supplied by Airline

6.7.A. Not later than five (5) working days after the end of each month, Airline shall file with Authority a written report on forms provided by Authority (Exhibit "D") for activity conducted by Airline during said month.

6.7.B. Not later than five (5) working days after the end of each month, separate reports shall be filed by Airline with Authority for any aircraft flights, scheduled or nonscheduled, handled by Airline for Non-Participating Airlines.

6.7.B. In the event Airline fails to submit the reports required by this Section 6.7 for the then current month by the tenth (10th) day of the succeeding month, Authority shall base its current rentals, fees and charges upon the most recent data transmitted by Airline to Authority, with such charges to be adjusted as necessary on the next succeeding payment date. If statistical data to be submitted by Airline continues to be unavailable in the next succeeding month, Authority shall develop estimates as to Airline's monthly activity for use in the calculation of Airline's rentals, fees and charges.

6.7.C. Airline shall at all times maintain and keep books, ledgers, accounts or other records at the Airport or at its headquarters offices reflecting the traffic statistics to be reported hereunder. Such books, ledgers, accounts and records shall be available for examination by Authority or its duly authorized representative during all reasonable business hours. If such books, ledgers, accounts or other records are not maintained at the Airport, Airline shall promptly furnish the Authority or its duly authorized representative with all information reasonably requested.

6.7.D. The acceptance by Authority of any Airline payment shall not preclude Authority from verifying the accuracy of Airline's reports on which Airline's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any.

Section 6.8 - Security for Payment

6.8.A. To provide security for the rentals, fees and charges due hereunder, Airline shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement.

6.8.A.(1) Post with the Authority a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to Authority.

6.8.A.(2) Deliver to Authority an irrevocable letter of credit drawn in favor of Authority upon a bank satisfactory to Authority. Said irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions satisfactory to Authority.

6.8.B. For purposes of this Section 6.8, any surety bond posted by Airline, or irrevocable letter of credit provided by Airline, shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the term hereof.

6.8.C. The security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees and per turn charges for the same period, all as reasonably estimated by the Director. The Authority may, upon ten business days notice to the Airline, require an increase in the amount of security deposit up to four additional months anticipated payments if, upon a review of the Airline's payment or performance history at the Airport, the authority determines an increase should be required.

6.8.D. In the event of any failure by Airline to pay when due any amounts payable under this Agreement, or upon any other default hereunder, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw against the full amount of the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Airline shall immediately replenish or replace the Security Deposit with cash, a new Letter of Credit or a new Bond, as applicable, up to the full amount of the Security Deposit required hereunder. If a Letter of Credit is posted, then the term and all renewal terms of the Letter of Credit shall be for a period of not less than one year, and the Letter of Credit shall be kept in full force and effect throughout the term of this Agreement, and for a period of six months following the termination date of this Agreement. If a Bond is posted, then the Bond shall be kept in full force and effect throughout the term of this Agreement and for a period of six months following the termination date of this Agreement.

6.8.E. Not less than 60 calendar days prior to any expiration date of the Letter of Credit or Bond, the Airline shall submit evidence in form satisfactory to Authority that said security instrument has been renewed. A failure to renew the Letter of Credit or Bond, as applicable, or to increase the amount of same if required by the Authority shall (i) entitle the Authority to draw down the full amount of such Security Deposit, and (ii) constitute an Event of Default of this Agreement, entitling Authority to exercise all available remedies.

Section 6.9 - Security Deposit Waiver

6.9.A. Notwithstanding the above Sections 6.8, Authority shall have the right to waive such Security Deposit requirements for any Airline which has provided regularly scheduled passenger flights to and from the Airport for eighteen (18) consecutive months without history of untimely payments for rentals, fees and charges prior to the Effective Date of its agreement. Any such waiver by Authority shall be conditioned upon said Airline having provided regularly scheduled passenger flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) consecutive month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without any history of untimely payments for rentals, fees, and charges. The burden shall be on Airline to demonstrate to Authority its compliance with these requirements at the six (6) other airports.

6.9.B. In the event Airline fails to make payment of undisputed rentals, fees and charges within sixty (60) days of the dates due as set forth in Article VI, then Airline shall provide Authority with the required Security Deposit within twenty (20) days from its receipt of such written notice and shall thereafter maintain such Security Deposit.

6.9.C. Upon the occurrence of any Airline act or omission that is an event enumerated in Section 10.4, or upon Airline's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be amended, supplemented, or replaced, Authority, by written notice to Airline given at any time within ninety (90) days of the date such event becomes known to Authority, may impose or reimpose the requirements of Section 6.8 on Airline. In such event, Airline shall provide Authority with the required Security Deposit within twenty (20) days from its receipt of such written notice and shall thereafter maintain such Security Deposit.

6.9.D. If Airline shall fail to obtain and/or keep in force such Security Deposit required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Article X and any accrued charges shall be as set forth by the Authority's Non-Participating Schedule of Fees and Charges. Authority's rights under this Section 6.9 shall be in addition to all other rights and remedies provided to Authority under this Agreement.

ARTICLE VII AIRPORT IMPROVEMENTS

Section 7.1 - General

The parties hereto recognize that capital expenditures to preserve, protect, enhance, expand, or otherwise improve Airport or any part thereof, may be required during the term of this Agreement. Any such capital expenditures shall be subject to the provisions of this Article VII.

Section 7.2 - Alterations and Improvements by Airline

7.2.A. Whenever consistent with this Agreement, Airline shall have the right to construct and install, at its sole expense, improvements in its Airline Premises as Airline deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by Director in writing prior to the commencement of any and all such construction or installation. Additionally, prior to the commencement of any such improvements, Airline shall obtain insurance and/or other protection of such types and in such amounts as reasonably deemed necessary by Director and shall submit evidence that such insurance has been obtained to Director. Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Ramp Area. Airline shall deliver to Director reproducible "as built's", in electronic form, of Airline improvements and additions no later than thirty (30) days following the substantial completion of any such improvements and additions.

7.2.B. Any construction or installation shall be at the sole risk of Airline and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

7.2.C. All improvements made to Airline Premises and additions and alterations thereto made by Airline shall immediately become the property of Authority; provided, however, that any trade fixtures, signs and other personal property of Airline not permanently affixed to Airline Premises shall remain the property of Airline unless otherwise specified according to the provisions of Article XII.

7.2.D. Airline shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a Builder's Risk form with the interest of Authority endorsed thereon, in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or improvements approved hereunder, in such limits as Director reasonably determines to be necessary.

7.2.E. Any removal by Airline of property installed by Airline under the terms of this Agreement shall be accomplished pursuant to Article XII and shall require the written consent of Director prior to such removal, which shall not be unreasonably withheld.

**ARTICLE VIII
DAMAGE OR DESTRUCTION**

Section 8.1 - Damage to Airport Facilities.

Airline shall be responsible for all damage to the Airport caused by the Airline, its agents, employees, contractors, subcontractors, or invitees, including but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, and all areas where any activities are conducted by Airline.

Section 8.2 - Authority not Liable for Damage to Airline's Property.

Authority shall not be liable to Airline for damage to Airline's property from any cause whatsoever, including without limitation, any act of negligence of any tenants, occupants, or other users of the Airport or any other person or from any cause whatsoever unless caused by the sole negligence of Authority, its agents, servants or employees. Airline shall have the right, however, to claim and recover its damages from any third party who may be liable therefor.

ARTICLE IX INDEMNIFICATION AND INSURANCE

Section 9.1 – Indemnification

9.1.A. Airline agrees to indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of Airline, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about Airline Premises or upon Airport Premises; or in connection with its use and occupancy of Airline Premises or use of Airport; provided, however, that Airline shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of Authority, its agents or employees. When acknowledgment of any action becomes known by the Airline or Authority, they shall give prompt written notice to the other party.

9.1.B. Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by Airline, its agents, employees, licensees, successors and assigns, or those under its control.

9.1.C To the fullest extent permitted by law, Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents, and employees, its successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by Airline) of any environmental claim arising out of or resulting from Airline's use and occupancy of Airline Premises or use of the Airport, including, but not limited to any claim for (i) discharge of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface water, ground water, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport or at any other site, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from Airline's Airport-related activities, but with respect to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, Airline shall not be liable for any environmental claim solely and directly attributable to a pre-existing condition on any Airport Area not caused or previously occupied by Airline or any corporate predecessor to Airline at any prior time. Airline shall not be liable for any environmental claim arising out of or resulting from the Authority's conduct.

9.1.D The provisions of this Section 9.1 shall survive the expiration or termination of this Agreement, with respect to occurrences during the term of this Agreement.

Section 9.2 – Insurance

9.2.A. Without limiting Airline's obligation to indemnify Authority, as provided for in Section 9.1, Airline shall procure and maintain in force at all times during the term of this Agreement an occurrence form, comprehensive airport premises liability and aviation insurance to protect against personal injury and bodily injury liability and property damage liability. The limits for Airlines operating aircraft larger than sixty (60) seats shall be in an aggregate amount of not less than \$100,000,000 per occurrence, combined single limit; provided, however, coverage for non-passengers shall be not less than an aggregate amount of \$25,000,000 per occurrence. The limits for Signatory Airlines operating aircraft with sixty (60) seats or less shall be in an aggregate amount of not less than \$50,000,000 per occurrence, combined single limit. In addition, Airline shall procure and maintain in force during the Term of this Agreement, liability insurance applicable to the ownership, maintenance, use, or operation of any automobile, mobile equipment or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than \$5,000,000 per occurrence; statutory Workers' Compensation insurance; and other policies of insurance reasonably required by Authority.

9.2.B. The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by Authority and may be adjusted by Authority if Authority reasonably determines such adjustments are necessary to protect Authority's interests. Airline shall furnish Authority no later than thirty (30) days following the execution of this Agreement a certificate or certificates of insurance as evidence that such insurance is in force. Authority reserves the right to require a certified copy of such certificates upon request. Airline shall name Authority as an additional insured on such insurance policy or policies to the extent of contractual liability assumed by Airline under Section 9.1 herein. Said policies shall be in a form and content satisfactory to Authority and shall provide for thirty (30) days written notice to Authority prior to the cancellation of or any material change in such policies.

Section 9.3 - Subrogation of Insurance

9.3.A. Authority hereby waives any and all rights of recovery against Airline for or arising out of damage or destruction of the building, or the demised premises, or any other property of Authority, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Airline, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

9.3.B. Airline hereby waives any and all rights of recovery against Authority for or arising out of damage to or destruction of any property of Airline from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Authority, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

ARTICLE X
CANCELLATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

Section 10.1 - Events of Default by Airline

10.1.A. Upon the occurrence of any one of the following events of default, Authority may issue a written notice of default after providing Airline the cure period noted:

10.1.A.(1) The conduct of any business or performance of any acts at Airport not specifically authorized herein or by other agreements between Authority and Airline, and said business or acts do not cease within thirty (30) days of receipt of Authority's written notice to cease said business or acts.

10.1.A.(2) The failure to cure a default in the performance of any of the terms, covenants and conditions required herein (except Contract Security requirements, insurance requirements, and payment of rentals, fees, and charges) within thirty (30) days of receipt of written notice by Authority.

10.1.A.(3) If by reason of the nature of such default referred to in Paragraph (2) above, the same cannot be remedied within thirty (30) days following receipt by Airline of written demand from Authority, and Airline fails to commence the remedying of such default, or having so commenced, shall fail thereafter to continue with diligence the curing thereof; provided, however, Airline's required performance under this Paragraph (3) shall be conditioned by the Force Majeure provisions of Section 16.16. Airline shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time.

10.1.B. Upon the occurrence of any one of the following events of default, Authority may immediately issue written notice of default:

10.1.B.(1) The failure by Airline to pay any part of the rentals, fees and charges due hereunder and the continued failure to pay said amounts in full within ten (10) days of the date of Authority's written notice of payments past due. Provided, however, if a dispute arises between Authority and Airline with respect to any obligation or alleged obligation of Airline to make payments to Authority, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then Authority shall promptly reimburse Airline any amount determined as not due. Further, throughout the duration of any appeal or contest of any fees or charges by Airline, Airline will not be held in default under the provisions outlined herein. Authority shall use due diligence in attempting to collect any past due rentals, fees, and charges from any Scheduled Air Carrier providing air service at the Airport, including Airline.

10.1.B.(2) The failure by Airline to provide and keep in force Contract Security in accordance with Section 6.8.

10.1.B.(3) The failure by Airline to provide and keep in force insurance coverage in accordance with Section 9.2.

10.1.B.(4) The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.

10.1.B.(5) The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation.

10.1.B.(6) The insolvency of Airline; or if Airline shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof.

10.1.B.(7) The voluntary discontinuance for a period of at least thirty (30) consecutive days by Airline of its operations at the Airport unless otherwise approved by Authority, in advance, in writing.

Section 10.2 - Continuing Responsibilities of Airline

Notwithstanding the occurrence of any event of default, Airline shall remain liable to Authority for all rentals, fees and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless Authority elects to cancel this Agreement, Airline shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until the expiration of this Agreement as set forth in Article II or until this Agreement is cancelled by Airline pursuant to Article XI.

Section 10.3 - Remedies of Authority for Airline's Default

Upon the occurrence of any event enumerated in Paragraphs 10.1.A. or 10.1.B., the following remedies shall be available to Authority:

10.3.A Authority may cancel this Agreement, effective upon the date specified in the notice of cancellation. For events enumerated in Paragraph 10.1.A., such date shall be not less than thirty (30) days from said notice. Upon such date, Airline shall have no further rights hereunder and Authority shall have the right to take immediate possession of Airline's Airline Premises.

10.3.B Authority may reenter the Airline Premises and may remove all Airline persons and property from same upon the date of reentry specified in Authority's written notice of reentry to Airline. For events enumerated in Paragraph 10.1.A., reentry shall not be less than thirty (30) days of the date of notice of reentry. Upon any removal of Airline property by Authority hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.

10.3.C Authority may relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as Authority, in its reasonable judgment, may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises. In reletting the Airline Premises, Authority shall be obligated to make a good faith effort to obtain terms no less favorable to Authority than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of Airline's default.

10.3.D In the event that Authority relets Airline Premises, rentals, fees, and charges received by Authority from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from Airline to Authority; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by Authority and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to Authority. Airline shall also pay to Authority, as soon as ascertained, any costs and expenses incurred by Authority in such reletting not covered by the rentals, fees, and charges received from such reletting.

10.3.E No reentry or reletting of Airline Premises by Authority shall be construed as an election on Authority's part to cancel this Agreement unless a written notice of cancellation is given to Airline.

10.3.F Airline shall pay to Authority all other costs incurred by Authority in the exercise of any remedy in this Article X, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

10.3.G Authority may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

Section 10.4 - Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against Airline of any proceeding under Federal bankruptcy laws, if Airline has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, Authority shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to Airline within sixty (60) days from the date of Airline's initial filing in bankruptcy court.

ARTICLE XI
CANCELLATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

Section 11.1. - Events of Default by Authority

Each of the following events shall constitute an "Event of Default by Authority":

11.1.A. Authority fails after receipt of written notice from Airline to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by Authority and such failure continues for thirty (30) days, or if by its nature such Event of Default by Authority cannot be cured within such thirty (30) day period, Authority fails to commence to cure or remove such Event of Default by Authority within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

11.1.B. Authority closes Airport to flights in general or to the flights of Airline, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

11.1.C. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

11.1.D. Airline is unable to use Airport for a period of at least thirty (30) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of at least thirty (30) days.

11.1.E. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict Airline from conducting its operations, and such restriction shall continue for a period of at least thirty (30) days.

Section 11.2 - Remedies of Airline for Authority's Defaults

Upon the occurrence of an Event of Default by Authority and after appropriate notice by Airline to Authority, Airline shall have the right to terminate this Agreement and all rentals, fees and charges payable by Airline under this Agreement shall terminate. In the event that Airline's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then Airline shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

ARTICLE XII
SURRENDER OF AIRLINE PREMISES

Section 12.1 - Surrender and Delivery

Promptly upon the termination of this Agreement, by lapse of time, or otherwise, Airline shall at once peaceably surrender and deliver to Authority Airline Premises and all improvements thereon to which Authority is entitled hereunder.

Section 12.2 - Removal of Property

12.2.A. Airline shall have the right at any time during the term of this Agreement to remove from Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in Airline unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise as provided herein, subject, however, to any valid lien which Authority may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property without the written consent of Authority. Any and all property not removed by Airline within thirty (30) days following termination of this Agreement shall, at the option of Authority, become the property of Authority at no cost to Authority. All Authority property damaged by or as a result of the removal of Airline property shall be restored by Airline to the condition existing before such damage at Airline's expense.

12.2.B. Notwithstanding the above, in the event that Airline desires to sell any baggage equipment to Authority upon the termination of this Agreement, or at any other time during the term of this Agreement, then in such event:

12.2.B.(1) Upon the prior written approval of the Director, Airline shall have the right to leave such property in place for a period not exceeding ninety (90) days following the termination of this Agreement, or the deletion, pursuant to Section 3.1, of the space on which such property is located, pending the successful completion of such a sale. During such period, Authority shall have the right to permit the use of such property by other Air Transportation Companies, without payment by Authority to Airline; provided, however, Airline shall have the right to seek payment for such use(s) directly from any such other Air Transportation Companies. In the event no such sale is completed such property must be removed immediately upon the expiration of the 90-day period.

12.2.B(2) Authority shall have the right of first refusal to purchase said property at the highest bona fide competing offer or market value.

ARTICLE XIII
ASSIGNMENT, SUBLETTING AND HANDLING AGREEMENTS

Section 13.1 - Assignment and Subletting by Airline

13.1.A.(1) Airline shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Airline Premises or any part thereof or any of the privileges recited herein without the prior written consent of the Director. However, Airline shall have the right to assign all or any part of its rights and interests under this Agreement to an Affiliate or to any successor to its business through merger or consolidation. Consent of Authority for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

13.1.A.(2) In the event Airline, using large jet-loader aircraft, intends to assign all or part of its Airline Premises to an Affiliate using smaller aircraft that cannot be served by a loading bridge, then in such an event Director may re-assign gate positions as appropriate to ensure the highest and best use of loading bridge gates and ramp safety.

13.1.A.(3) Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge by a writing satisfactory in form and content to Authority that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.

13.1.B. Airline shall not sublease Airline Premises.

Section 13.2 - Handling Agreements

In the event Airline agrees to ground handle any portion of the operations of another Scheduled Air Carrier or of a Requesting Airline, Airline shall provide Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not commence to ground handle another Scheduled Air Carrier or a Requesting Airline without the prior written permission of the Director if such Scheduled Air Carrier or Requesting Airline does not have in force an operating agreement with Authority.

Section 13.3 – Miscellaneous

No assignment, transfer, conveyance, or granting a nonexclusive license by Airline shall relieve in any manner Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent of the Director to such relief. The Director shall consider all relevant factors, including the financial strength of the proposed assignee in determining whether to grant such relief.

ARTICLE XIV
ACCOMMODATION OF A REQUESTING AIRLINE

Section 14.1 - Declaration of Intent

The parties hereto acknowledge the objective of Authority to offer to all airlines desiring to serve Airport access to Airport and to provide adequate Gate Positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Aircraft Parking Apron areas to meet the stated requests of Airline or other airlines for additional facilities, Authority hereby states its intent to accommodate such requests, if necessary, through sharing, from time to time, of Gate Positions and other Terminal facilities.

Section 14.2 - Accommodation of Requesting Airlines

14.2.A.(1) In the event Authority cannot accommodate a Requesting Airline in areas not then leased to Scheduled Air Carriers or other Terminal tenants, then in such event Airline agrees to cooperate with Authority to accommodate the needs of a Requesting Airline on a temporary basis by permitting such Requesting Airline to utilize Gate Position(s) and other portions of Airline Premises and other necessary facilities in connection with and for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with Requesting Airline's planned operations at times when the use of such facilities shall not interfere with Airline's planned operations (i.e., one (1) hour prior to a scheduled arrival, one (1) hour after the scheduled departure time, or overnight parking of aircraft of Airline. Authority shall provide Airline with as much advance notice as reasonably possible so that Airline may plan for the accommodation of a Requesting Airline.

14.2.A.(2) Airline's obligation hereunder shall be subject to execution of a written agreement between Airline and such Requesting Airline, including indemnification of Airline by Requesting Airline, setting forth mutually agreed to terms and conditions governing such use which shall include a charge by Airline for its costs plus a reasonable administrative charge not to exceed fifteen (15) percent.

14.2.A.(3) Airline agrees to make reasonable efforts to facilitate the temporary accommodation of Requesting Airline's operations, including use of ticket counter area, use of Airline's baggage facilities and use of other portions of Airline Premises and facilities reasonably available to accommodate Requesting Airline, if (1) Airline has adequate capabilities, capacity, facilities and personnel therefore, after taking into account Airline's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of Airline, and the need for labor harmony, and (2) said Requesting Airline enters into a written agreement with Airline therefore, which agreement shall be approved in writing by Authority prior to the effective date thereof.

14.2.A.(4) In the event Requesting Airline materially defaults under the provisions of its written agreement with Airline, then in such event Airline shall no longer be required to accommodate Requesting Airline.

14.2.B. Subject to the provisions of Section 13.1, nothing contained in this Article XI shall prevent or prohibit Airline from electing to enter into an agreement with other air carriers authorized to operate at Airport and desiring to use Airline Premises as provided in Article XIII herein.

14.2.C. During the period of use of Airline Premises by a Requesting Airline at Authority's request pursuant to this Article XIV, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said accommodated Requesting Airline's use of Airline Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensees, or those under its control who have come upon Airline Premises in connection with Airline's occupancy hereunder. Authority shall require such Requesting Airline to indemnify Authority and Airline in the manner and to the extent required of Airline pursuant to Article IX.

ARTICLE XV GOVERNMENT INCLUSION

Section 15.1 - Federal and Other Governmental Authority Funds

15.1.A. This Agreement shall be subordinate to the provisions of any existing or future agreements between Authority and the United States Government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or other governmental authority funds for the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. Authority agrees to provide Airline written notice in advance of the execution of such agreements of any provisions which would modify the terms of the Agreement.

15.1.B. Authority shall not permit revenue diversion from the Airport, as such diversion is defined in the Federal Aviation Administration Act of 1994 and the Federal DOT's 1999 policy implementing the provisions of the 1994 Act.

Section 15.2 – Nondiscrimination

15.2.A. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15.2.B. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport; (2) in the construction of any improvements, on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Airline shall use Airport in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15.2.C. Airline shall use Airport in compliance with all requirements imposed by or pursuant to 14 CFR Part 152 and Title VI of the Civil Rights Act of 1964, and as said Title and Regulations may be amended, and assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities

covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Airline assures that it will require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

15.2.D. Airline shall comply with the laws of the State of Kansas and City of Wichita prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, or handicap, and as such laws may be amended or unless a waiver has been granted by the United States Government.

15.2.E. Should Airline authorize another person, with Authority's prior written consent, to provide services or benefits upon Airline Premises, Airline shall obtain from such person a written agreement to comply with Paragraphs 15.2.A. through 15.2.D. If requested, Airline shall furnish a copy of such agreement to Authority prior to said authorization.

15.2.F. In the event the breach of any of the above nondiscrimination covenants shall constitute an Event of Default by Airline, Authority shall have the right to terminate this Agreement and to reenter and repossess the Airline Premises and the facilities thereon and hold the same as if this Agreement had never been made or issued. The right granted to Authority by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

ARTICLE XVI MISCELLANEOUS PROVISIONS

Section 16.1 - Rights Non-Exclusive

Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement, except in the Exclusive Use Premises, are "non-exclusive", and nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as such may be amended.

Section 16.2 - Airport Security

Airline and Authority shall comply with all applicable regulations relating to Airport security and shall cooperate in controlling the Airline Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

Should Airline, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should Authority be cited for a civil fine or penalty for such security violation, Airline agrees to reimburse Authority for any monetary civil fine or penalty, which may be imposed on Authority by TSA, however, nothing herein shall prevent the Airline from contesting the legality, validity or application of such fine or penalty to the full extent Authority may be lawfully entitled.

Section 16.3 - Avigation Rights

16.3.A. Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of Airport, including Airline Premises, for navigation or flight in said airspace for landing on, taking off from, or operating on Airport, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, using said airspace or landing at, taking off from, or operating on or about Airport.

16.3.B. Authority reserves the right to take any action it considers necessary to protect the aerial approaches of Airport against obstructions, including the right to prevent Airline from erecting, or permitting to be erected, any building or other structure on Airport which, in the opinion of Authority, would limit the usefulness of Airport or constitute a hazard to aircraft.

Section 16.4 - Height Limitations

Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on Airline Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or replaced from time to time.

Section 16.5 - National Emergency

During time of war or national emergency Authority shall have the right to enter into an agreement with the United States Government for use of part or all of the Landing Area, the publicly-owned air navigation facilities and/or other areas or facilities of Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended.

Section 16.6 - Compliance With Law

16.6.A. Airline, its agents and employees, shall observe and comply with all applicable rules, regulations, orders and restrictions which are now in force or which may hereafter be adopted by Authority or the City of Wichita with respect to the operation of Airport, and shall also be subject to any and all applicable current and future laws, statutes, rules, regulations or orders of any governmental authority lawfully exercising authority over Airport or Airline's operations conducted hereunder: provided, however;

16.6.A.(1) Any new rules, regulations, orders or restrictions enacted by Authority during the term of this Agreement shall not be inconsistent with the terms, provisions, rights and privileges granted hereunder, unless enacted in compliance with the lawful rules, regulations, ordinances, laws or orders of other governmental authorities having jurisdiction over the operation of the Airport.

16.6.A.(2) Airline may, at its own risk, costs and expense and at no cost to Authority, and without being considered to be in breach of this Agreement, contest by appropriate judicial or administrative proceedings the applicability or the legal or constitutional validity of such rules, regulations, ordinances, laws or orders.

16.6.B. Authority shall not be liable to Airline for any diminution or deprivation of its rights hereunder due to the exercise of any such authority as provided for in this Section 16.6, nor shall Airline be entitled to terminate this Agreement by reason thereof unless the exercise of such authority shall so interfere with Airline's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or permit Airline to cancel this Agreement pursuant to the provisions of Article XI.

Section 16.7 - Agent for Service of Process

It is expressly understood and agreed that if Airline is not a resident of the State of Kansas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation not licensed to do business in Kansas, then in any such event, Airline designates the Secretary of State, State of Kansas, its agent for the purpose of service of process in any court action between it and Authority arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Kansas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, then as an alternative method of service of process, Airline may be personally served with such process out of this State by the registered mailing of such complaint and process

to Airline at the address set forth herein. Any such service out of this State shall constitute valid service upon Airline as of the date of mailing to respond thereto.

Section 16.8 - Nonliability of Agents and Employees

No member, officer, agent, director, or employee of Authority or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this

Agreement or because of any breach thereof or because of its execution or attempted execution.

Section 16.9 - Partnership or Agency

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of Authority and Airline.

Section 16.10 - Taxes, Assessments, and Licenses

Airline shall at its own expense obtain all permits, licenses, approvals and certificates and pay all taxes, assessments, fees and charges required by any regulation or any law of the City of Wichita, County of Sedgwick, State of Kansas, the United States, or other governmental body with regard to the business to be conducted by Airline on Airport or within its Airline Premises pursuant to the terms of this Agreement; provided, however, that Airline may, at its own risk, costs and expense and at no cost to Authority, contest by appropriate judicial or administrative proceedings the applicability or amounts of any such taxes, assessments, fees and charges.

Section 16.11 - Approval by Authority

Whenever this Agreement calls for approval by Authority, such approval shall be evidenced by the written approval of the Director or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

Section 16.12 – Most Favored Nation

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities and equipment, subject to reasonable classifications such as tenants or Non-Participating Airlines and Signatory Airlines and Non-Signatory Airlines. Classification or status as tenant or Signatory Airline shall not be unreasonably withheld by the Airport, provided Air Transportation Company assumes obligations substantially similar to those already imposed on Air Transportation Companies in such classifications or status.

Section 16.13 - Compliance by Other Tenants

Authority shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, Authority shall not be liable to Airline for any violation or non-observance of such rules and regulations by any tenant, concessionaire or other Air Transportation Company at Airport.

Section 16.14 - Quiet Enjoyment

Authority agrees that on payment of the rentals, fees and charges due hereunder, and performance of the covenants and agreements on the part of Airline to be performed hereunder, Airline shall peaceably have and enjoy Airline Premises and all the rights and privileges of Airport, its appurtenances and facilities.

Section 16.15 - Authority's Right of Entry

Any authorized representative of Authority shall have the right to enter upon any premises and facilities of Airport at any reasonable time for the purpose of inspection or for any purpose incident to the performance of its obligations hereunder or in the exercise of any of its governmental functions. Authority shall use its best efforts to avoid disruption of Airline's operation.

Section 16.16 - Force Majeure

Except as herein provided, neither Authority nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations other than the payment of rentals, fees and charges hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control. Under no circumstances shall the occurrence of any event provided for in this Section 16.16 excuse Airline from paying the rentals, fees and charges payable to Authority by Airline pursuant to the terms of this Agreement during the term of this Agreement.

Section 16.17 – Notices

Notices required herein may be given by registered or certified mail by depositing the same in the the United States mail, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to Authority shall be addressed as follows:

Wichita Airport Authority
2173 Air Cargo Road
Wichita Mid-Continent Airport
Wichita, Kansas 67209

Notices to Airline shall be addressed as follows:

Allegiant Air, LLC
8360 South Durango Boulevard
Las Vegas, NV 89113

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

Section 16.18 - Place of Payment

All payments required of Airline by this Agreement shall be made at the office of The Wichita Airport Authority, 2173 Air Cargo Road, Wichita Mid-Continent Airport, Wichita, Kansas 67209, or to such other address as may be substituted therefore.

Section 16.19 - Nonwaiver of Rights

No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 16.20 - Governing Law

This Agreement is to be read and construed in accordance with the laws of the State of Kansas and ordinances of the City of Wichita. The parties hereto agree that any court of proper jurisdiction sitting in Sedgwick County, Kansas shall be the proper forum for any actions brought hereunder.

Section 16.21 – Severability

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, by any court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby unless continued enforcement thereof would unreasonably prejudice the rights of either party to perform and/or enjoy the rights provided under this contract, in which case the party so prejudiced may terminate this Agreement upon thirty (30) days' written notice.

Section 16.22 - Other Agreements

Nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between Authority and Airline authorizing the use of Airport, its facilities and appurtenances upon payment of rentals, fees and charges therein provided.

Section 16.23 – Gender

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 16.24 - Headings and Titles

The headings of the articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

Section 16.25 - Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 16.26 - Entire Agreement

16.26.A. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Airline that Authority and Authority's agents have made no representations or promises with respect to this Agreement or the making of this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against Authority for, and Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with Authority being expressly waived by Airline.

16.26.B. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 16.27 – Amendment

Except as provided herein, no amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Section 16.28 – Savings

This Agreement is the result of extensive negotiations between the parties and shall not be construed against Authority by reason of the preparation of this Agreement by Authority.

Section 16.29 - Successors and Assigns Bound

All of the covenants, conditions and agreements contained herein shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties hereto.

Section 16.30 – Subordination to Bond Resolution

16.30.A This Agreement and all rights of Airline hereunder are expressly subject and subordinate to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by Authority to secure Bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of any Bond Resolution.

16.30.B In conflicts between this Agreement and a Bond Resolution, the Bond Resolution shall govern.

16.30.C All definitional terms that are not specifically defined herein shall have the meanings set forth in the Bond Resolution.

Section 16.31 – Performance

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

Section 16.32 - Capacity to Execute

16.32.A. Authority and Airline each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party.

16.32.B. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

IN WITNESS THEREOF, Authority has caused these presents to be executed by the Wichita Airport Authority, by direction of the City Council, attested to by the City of Wichita Clerk and the seal of the Wichita Airport Authority affixed hereunto, and Airline has caused these presents to be signed by its proper corporate officers and its corporate seal hereunto affixed and attested to as of the day and year first above written.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"Authority"

By _____
Victor D. White, Director of Airports

ATTEST:

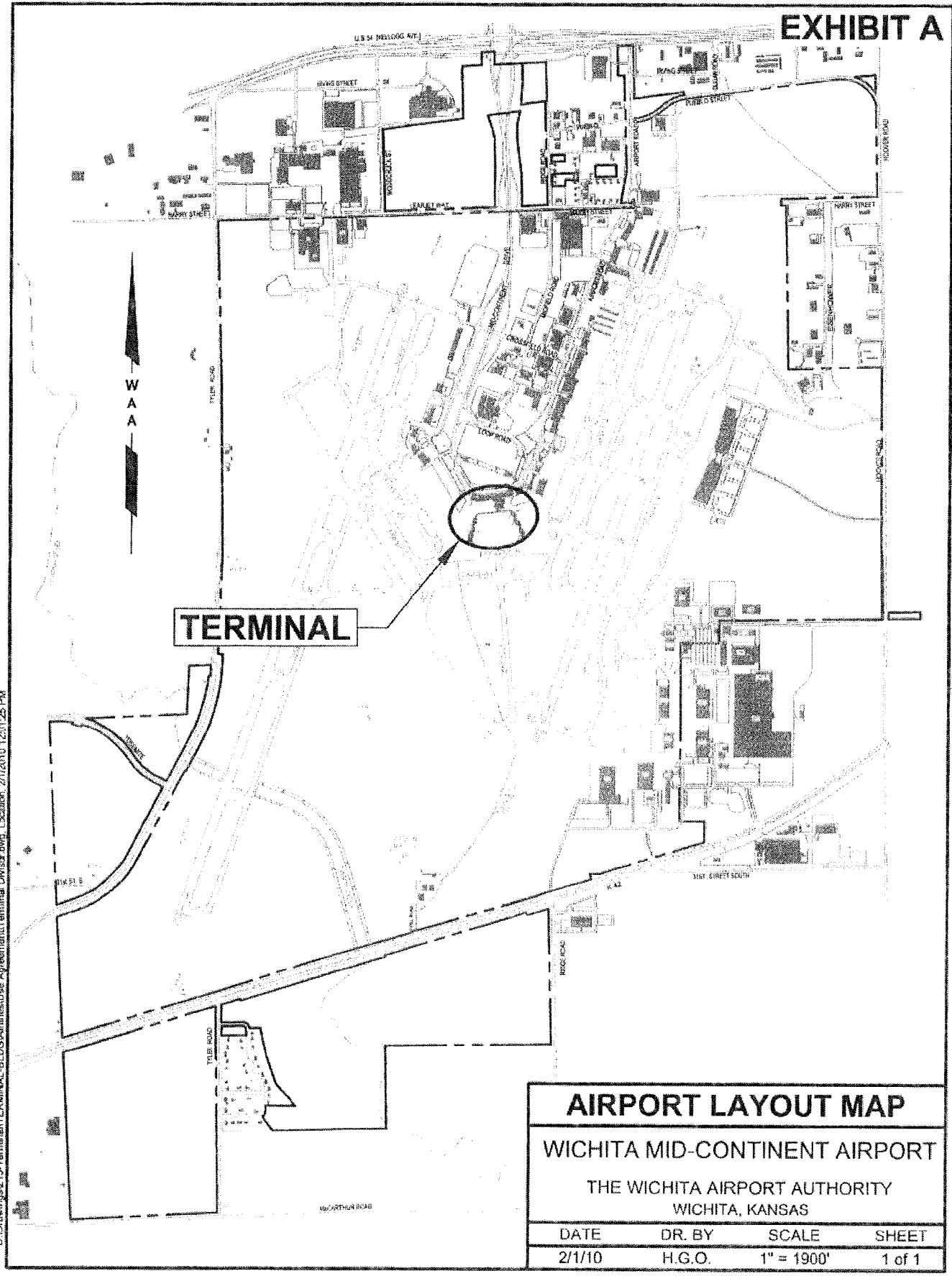
ALLEGiant AIR, LLC

By: KH
Title: Manager - AIRPORT Planning

By: [Signature]
Title: Director of Airport Planning
"Airline"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

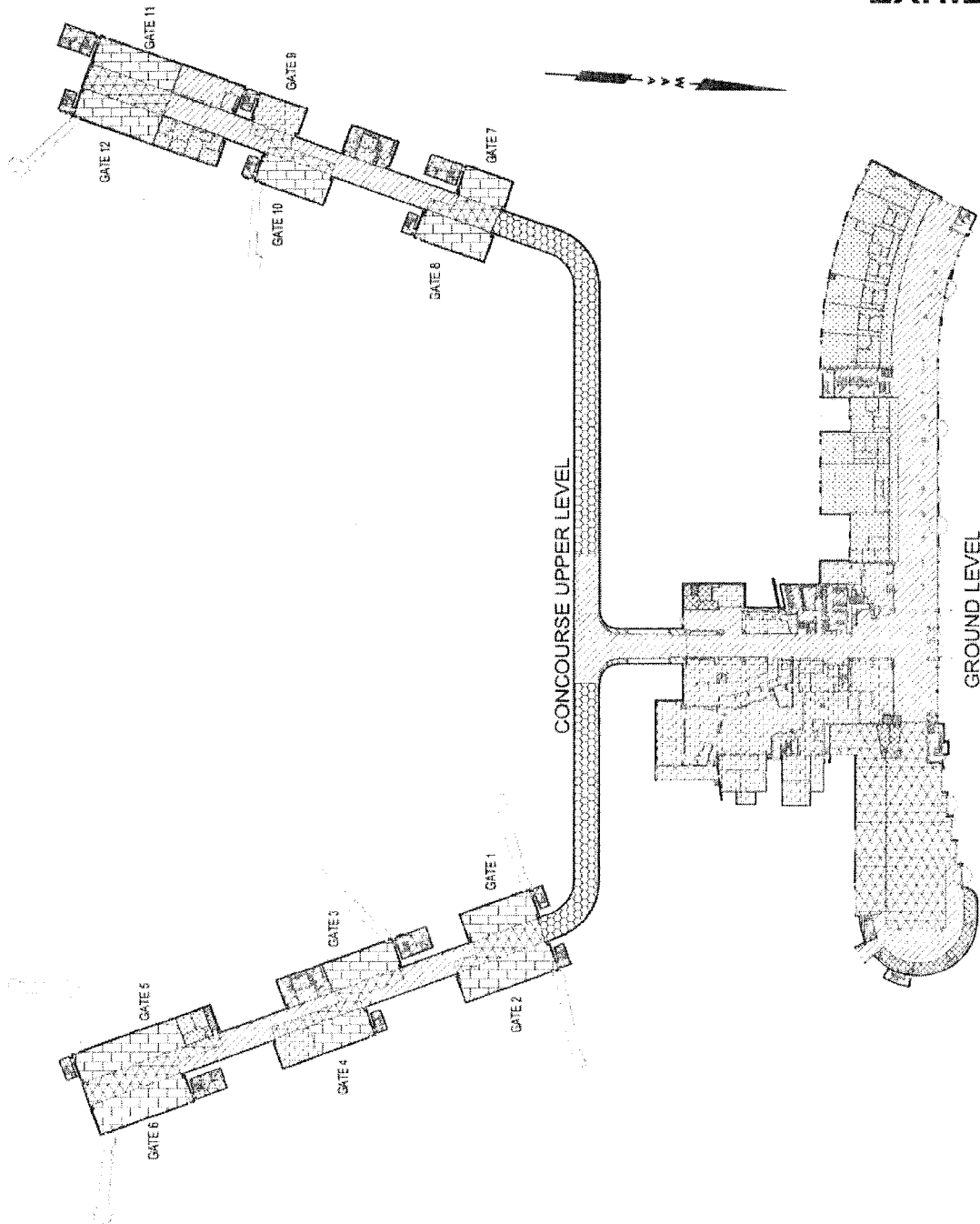
EXHIBIT A



AIRPORT LAYOUT MAP			
WICHITA MID-CONTINENT AIRPORT			
THE WICHITA AIRPORT AUTHORITY WICHITA, KANSAS			
DATE	DR. BY	SCALE	SHEET
2/1/10	H.G.O.	1" = 1900'	1 of 1

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EXHIBIT B



LEGEND

	PREFERENTIAL		COMMERCIAL SPACE
	EXCLUSIVE USE		PUBLIC AREA
	JOINT USE		MECHANICAL/ UTILITY AREA
	CONCESSION SPACE		AREA NOT INCLUDED IN TERMINAL DIVISOR

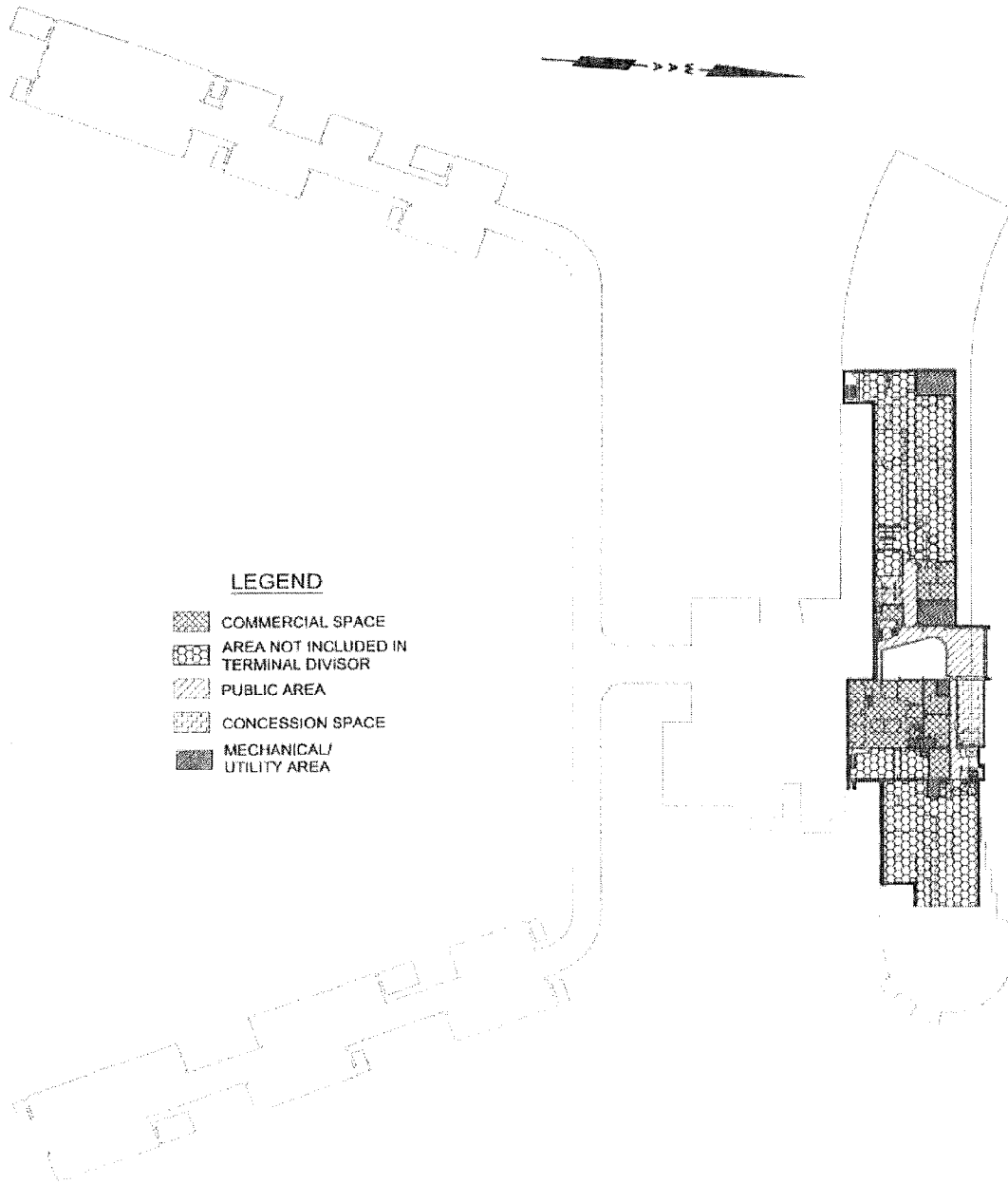
TERMINAL MAIN FLOOR

WICHITA MID-CONTINENT AIRPORT






THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/1/10	H.G.O.	1" = 120'	1 of 3

EXHIBIT B



LEGEND

-  COMMERCIAL SPACE
-  AREA NOT INCLUDED IN TERMINAL DIVISOR
-  PUBLIC AREA
-  CONCESSION SPACE
-  MECHANICAL/UTILITY AREA

TERMINAL 2ND FLOOR

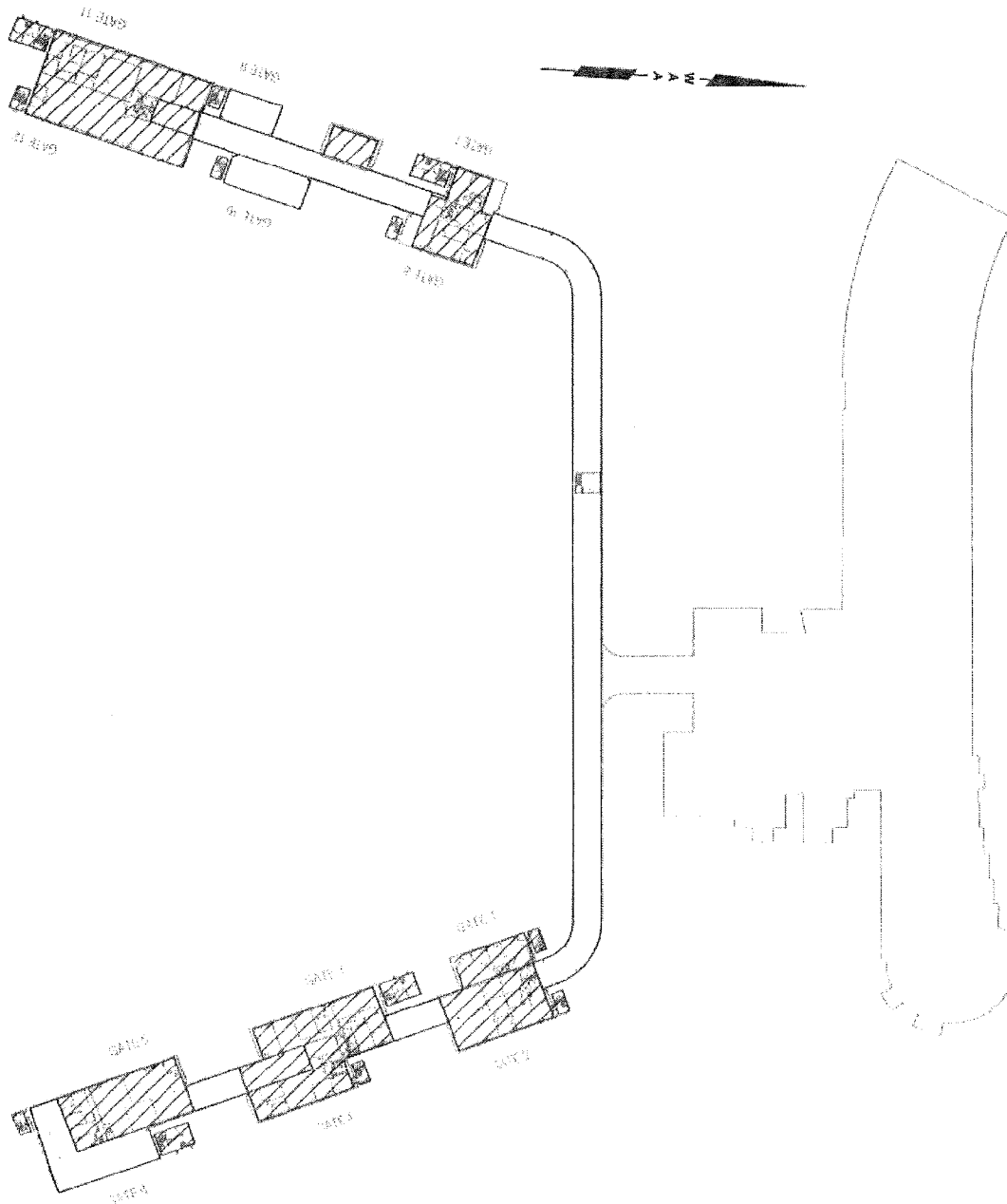
WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS



DATE	DR. BY	SCALE	SHEET
2/1/10	H.G.O.	1" = 120'	2 of 3

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EXHIBIT B



LEGEND

-  OPERATIONS ENCLOSED
-  OPERATIONS COVERED UNENCLOSED

TERMINAL OPERATIONS

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
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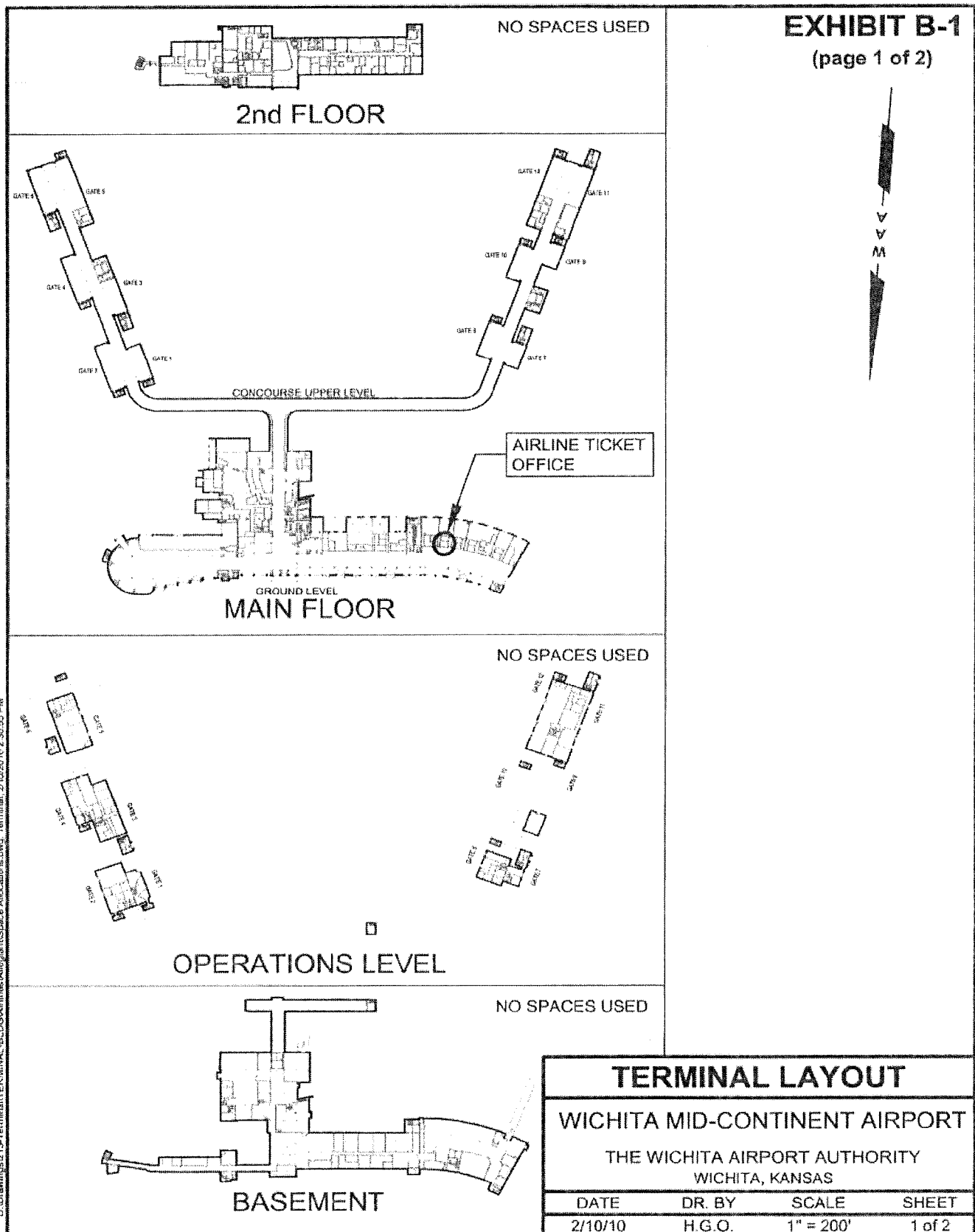
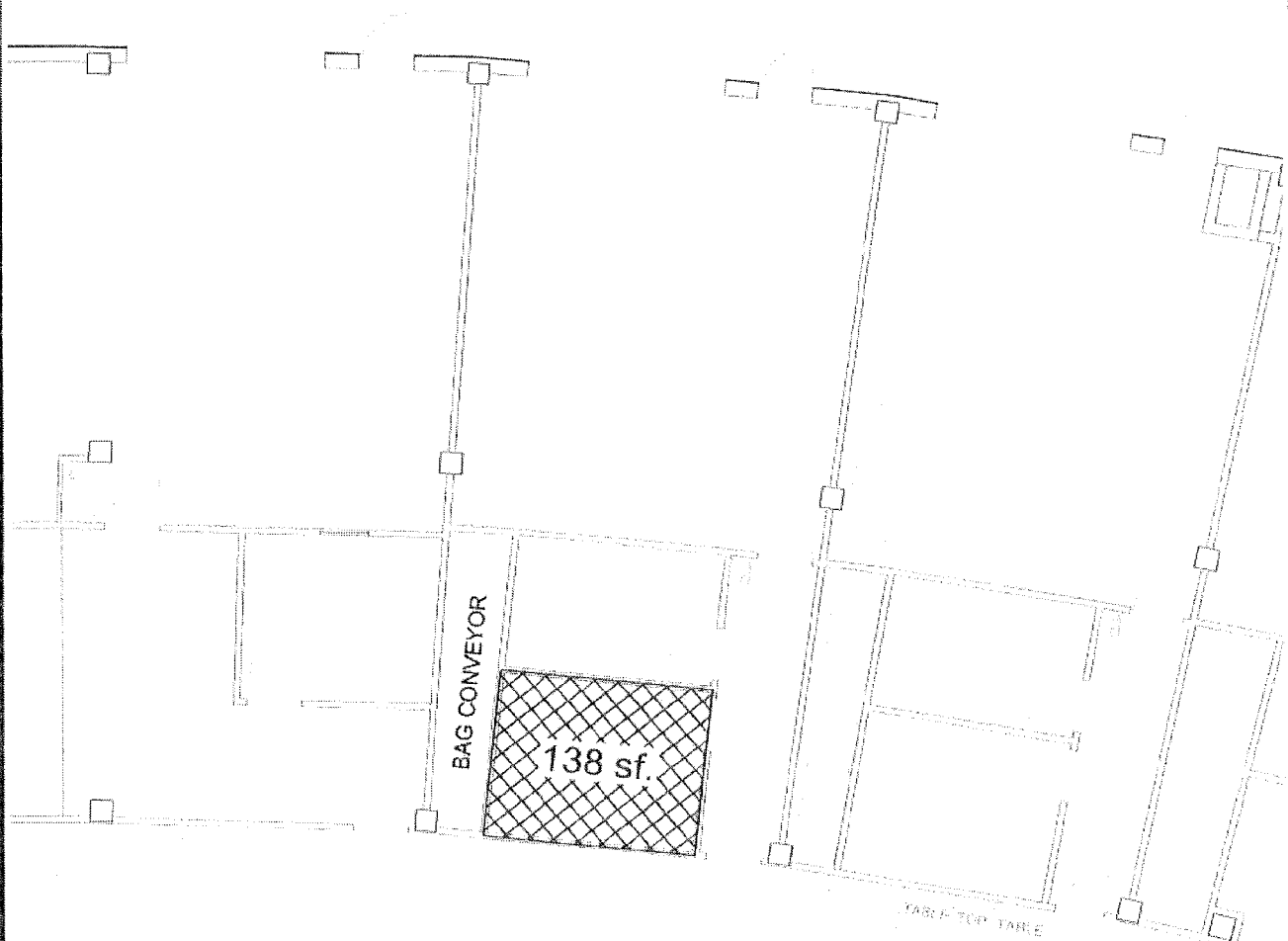


EXHIBIT B-1

(page 2 of 2)

RAMP



PASSENGER TICKETING
AREA

LEGEND

EXCLUSIVE



138 sq. ft.



AIRLINE TICKET OFFICE

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
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Exhibit "C"

RESPONSIBILITY OF AUTHORITY AND AIRLINE FOR MAINTENANCE AND OPERATION OF TERMINAL AREAS

	Airline Exclusive Use					Airline Preferential Use	
	Ticket Counter	Offices	Bag Make-Up	Unenclosed Covered Apron	Opts Areas Other	Holdroom	Apron
Air Conditioning Maintenance	W	W	W	N/A	W	W	N/A
Chilled Air Distribution	W	W	W	N/A	W	W	N/A
Electrical							
Bulb & Tube Replacement	A	A	A	A	A	A	N/A
Power	W	W	W	W	W	W	N/A
Maintenance & Repair	W	W	W	W	W	W	N/A
Heating							
Maintenance	W	W	W	N/A	W	W	N/A
Warm Air Distribution	W	W	W	N/A	W	W	N/A
Water-Maintenance							
Distribution	W	W	W	W	W	W	N/A
Fixtures	W	W	W	W	W	W	N/A
General Maintenance & Repair							
Other than Structure (incl. doors)	A	A	A	A	A	A	W
Structure*	W	W	W	W	W	W	W
Exterior	W	W	W	W	W	W	W
Sewage & Plumbing							
Distribution	W	W	W	W	W	N/A	W
Fixtures	A	A	A	W	A	N/A	W
Public Address System	W	W	W	W	W	W	N/A
Custodial Service**	A	A	A	N/A	A	W	N/A
Window Cleaning							
Exterior	A	A	A	N/A	A	W	N/A
Interior	A	A	A	N/A	A	W	N/A
Snow & Ice Removal							
Walkways	N/A	N/A	N/A	A	A	N/A	A
Other	N/A	N/A	N/A	W	N/A	N/A	W
Pest Extermination	W	W	W	W	W	W	W
Flooding	W	W	W	W	W	W	W

Notes:

A = Airline

W = Wichita Airport Authority

N/A = Not Available or Not Applicable

*Structure is defined as anything, which has a structural load-bearing function. This may include load-bearing walls, and horizontal and vertical beams and bracings, but may not include non-load bearing walls, ceilings, doors and door frames.

**Custodial Services includes routine vacuum, trash removal, carpet extraction, steam cleaning and other specialty cleaning.

PUBLIC AND JOINT USE AREAS - Both areas will be maintained by the Wichita Airport Authority.

EXHIBIT "D"

MONTHLY STATISTICAL REPORT

(To be submitted within 5 working days following the end of each month)

SUBMIT TO:

The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
Wichita, KS 67209

FOR THE MONTH OF _____, _____

AIRLINE NAME _____

(A separate Exhibit should be submitted for each airline.)

1. PASSENGERS

	<u>Enplaned</u>	<u>Deplaned</u>	<u>Total</u>
Revenue	_____	_____	_____
Non-Revenue	_____	_____	_____
Total	=====	=====	=====

2. CARGO & MAIL (Pounds)

	<u>Enplaned</u>	<u>Deplaned</u>	<u>Total</u>
Cargo*	_____	_____	_____
Mail	_____	_____	_____
Total	=====	=====	=====

* Cargo includes freight plus express.

I certify that the above information is correct to the best of my knowledge and belief.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

EXHIBIT "E"

MONTHLY LANDED WEIGHT/FEE REPORT

(To be submitted within 5 days following the end of each month)

SUBMIT TO:

The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
Wichita, KS 67209

FOR THE MONTH OF _____, _____

AIRLINE NAME _____

(A separate Exhibit should be submitted for each airline.)

3. AIRCRAFT LANDINGS

A. Landings NOT Subject to Landing Fees:

<u>Aircraft</u> <u>Type</u>	<u>FAA Certified</u> <u>Maximum Gross</u> <u>Landing Weight</u>	<u>Number</u> <u>of</u> <u>Landings</u>	<u>Total Landed Weight</u>
Training & Testing*			

Return Landings

Total

=====

* Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

EXHIBIT "E"

1. AIRCRAFT LANDINGS (continued)

B. Landings Subject to Landing Fees:

<u>Aircraft</u> <u>Type</u>	<u>FAA Certified</u> <u>Maximum Gross</u> <u>Landing Weight</u>	<u>Number</u> <u>of</u> <u>Landings</u>	<u>Total Landed Weight</u>
Revenue Landings			

Training & Testing*

Other Non-Revenue
Landings

Total

=====

Divided by 1,000

Landed Weight (lbs): _____

Multiplied by the Landing Fee Rate of \$ _____

Total Landing Fee Charges: \$ =====

* Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

EXHIBIT "E"

2. TERMINAL USE CHARGES

	<u>Unleased Ticket Counter</u>	<u>Unleased Terminal Holdroom</u>	<u>Unleased Loading Bridge</u>
Number of Times Used	_____	_____	_____
Current Fee	\$ _____	\$ _____	\$ _____
Total Terminal Use Charges	\$=====	\$=====	\$=====

(Joint Use Charge is calculated based on number of landings.)

3. AIRCRAFT PARKING CHARGES (other than at leased gates)

	<u>Parking Occurrences</u>	<u>Total Hours in Excess of 24 Hours Each Occurrence</u>
Quantity	_____	_____
Current Fee	\$ _____	\$ _____
Total Parking Charges	\$=====	\$=====

The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

**City of Wichita
City Council Meeting
September 28, 2010**

TO: Wichita Airport Authority

SUBJECT: Federal Aviation Administration
Lease No. DTFACE-91-L-10547 - Supplemental Agreement No. 7
1801 Airport Road - Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: The Wichita Airport Authority (WAA) and the Federal Aviation Administration (FAA) entered into an eighteen-year agreement in 1991 to lease and expand the facility located at 1801 Airport Road. The office complex houses the following divisions: Aircraft Certification Office (ACO), Flight Standards District Office (FSDO), and Manufacturing Industrial District Office (MIDO). The lease will expire on September 30, 2010 and the FAA wishes to extend the term for an additional year.

Analysis: The building complex includes 31,608 sq. ft. of office and technical space. In addition, there is 7,017 sq. ft. of basement storage space, maintenance storage space, and a tornado shelter. There are two sources of revenue associated with the lease, which are facility rent and operational cost. The operational cost is a full-service fee that includes janitorial services and utility costs. Facility rent will be charged per square foot per year. The supplemental agreement is to be effective October 1, 2010.

Financial Considerations: The 1991 lease stipulates that only the operational cost will be incurred during the last three years of the lease. However, during the extension period, the WAA will charge both facility rent and operational cost. As a result, negotiations with the FAA set the rental rate at \$9.25 per sq. ft. for the 31,608 sq. ft. of office and technical space and a rental rate of \$4.63 for the remaining areas, 7,017 sq. ft. of space. The operational cost will continue at the rate of \$4.12 for the entire space, 38,625 sq. ft. These rates are based upon leases that the FAA has recently entered into with the WAA for similar office facilities on the Airport. Therefore, the new combined annual revenue for facility rent and operational cost to the WAA is \$483,997. This amount reflects an annual increase of \$315,143 that is new revenue to the WAA.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through negotiating agreements which allow Mid-Continent's Airport partners to continue their operations on the Airport, which in turn, generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 7.

U.S. Department of Transportation Federal Aviation Administration SUPPLEMENTAL LEASE AGREEMENT	SUPPLEMENT NUMBER 7	DATE
	TO LEASE NO... DTFACE-91-L-10547	
ADDRESS OF PREMISES		
<p>THIS AGREEMENT, made and entered into this date by and between THE WICHITA AIRPORT AUTHORITY hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:</p> <p>A Federal Aviation Administration (FAA) co-located office and storage building located at 1801 Airport Road, Wichita Mid-Continent Airport, Wichita, Kansas, together with the right of ingress to and egress from the premises at all times.</p> <p>WHEREAS, the parties hereto desire to amend the above Lease.</p> <p>WHEREAS, the current lease expires on September 30, 2010, and,</p> <p>WHEREAS, the Federal Aviation Administration has a need to extend the current lease by one year, and,</p> <p>WHEREAS, the FAA has a continuing need for the following space:</p> <ul style="list-style-type: none"> 31,608 sq. ft of office and technical space 2,900 sq. ft. storage, Maintenance Building 1,496 sq. ft. basement assigned storage area <u>2,621 sq. ft.</u> of common areas (Tornado Shelter) 38,625 sq. ft. total <p>NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, as follows:</p> <p>Delete Articles 2 and 3 in their entirety and replace with the following:</p> <p>2. TERM - To have and to hold, for the term commencing on October 1, 2010 and continuing through September 30, 2011, inclusive, PROVIDED, that adequate appropriations are available from year to year for the payment of rentals.</p> <p>3. RENTAL – Rent for a fully serviced lease in the amount of \$483,998.18 per annum shall be payable to the Lessor in the amount of \$40,333.18 in arrears each Month and will be due on the first workday of each month, without the submission of invoices or vouchers. Subject to available appropriations. Rent shall be considered paid on the date a check is dated or an electronic funds transfer is made. Rent for a period of less than one month shall be prorated. Checks will be made payable to: Wichita Mid-Continent Airport Authority, 2173 Air Cargo Road, Wichita, KS 67209.</p> <p>All other terms and conditions of Lease No. DTFACE-91-L-10547 shall remain the same.</p>		

Supplement No. 7 shall become binding upon execution by both parties.	
IN WITNESS WHEREOF, the parties subscribed their names as of the above date.	
WICHITA MID-CONTINENT AIRPORT AUTHORITY	
BY _____ <div style="text-align: center;">(Signature)</div>	_____ <div style="text-align: center;">(Title)</div>
IN THE PRESENCE OF (witnessed by:)	
_____ <div style="text-align: center;">(Signature)</div>	_____ <div style="text-align: center;">(Address)</div>
UNITED STATES OF AMERICA	
BY _____ <div style="text-align: center;">(Signature)</div>	_____ <div style="text-align: center;">Contracting Officer (Official Title)</div>

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL SEPTEMBER 28, 2010**

- a. 2010 Sanitary Sewer Rehabilitation, Phase A (various locations) (north of Harry Street, east of Maize Road) (468-84700/620561/600678) Traffic to be maintained using flagpersons and barricades. (District I,II,V) - \$221,000.00
- b. 2010 Contract Maintenance Concrete Repairs, Phase 3 (Benjamin, Bullinger, Walker - Seneca to Meridian) (472-84938/132723/) Traffic to be maintained using flagpersons and barricades. (District IV,VI) - \$70,000.00

Following are easements and dedications for City Council on September 28

The following deeds and easements have been recorded:

Quit Claim Deed from Sedgwick County Board of County Commissioners dated August 25, 2010 for tracts of land lying in N.A. English's 4th Addition to Wichita Sedgwick County, Kansas (OCA 607861) No Cost to City

The following easement needs to be recorded:

Public Utility Easement from The City of Wichita, Kansas, a Municipal Corporation dated September 28, 2010 for a tract of land lying in the west half of Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas (OCA 785160) No Cost to City

Storm Water Drainage and Detention Basin Improvements Easement dated September 17, 2010 from Silverton LLC for a pond lying within Reserve C and Reserve D, Silverton Addition, an addition to Wichita, Sedgwick County, Kansas, (OCA #751490) No cost to City.

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Greater Pentecostal Church of God in Christ Family and Friends Day (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor Denise Thomas, secretary of Greater Pentecostal Church of God in Christ is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Greater Pentecostal Church of God in Christ Family and Friends Day September 26, 2010 8:00 am – 8:00 pm

§ Murdock Street, Cleveland Street to Mathewson Avenue

The event sponsor will arrange to remove the barricades as necessary to allow emergency vehicle access during entire designated time period. Barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department.

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Prairie Fire Marathon Set Up
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor Bob Hansen, President CEO, Greater Wichita Area Sports Commission is coordinating with area business owners and making arrangements with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Prairie Fire Marathon Set Up October 9, 2010 10:00 am – October 10, 2010 5:00 am
§ Lewis/Waterman, Main Street to Wichita Street

The event sponsor will arrange to remove the barricades as necessary to allow emergency vehicle access during entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Community Events – 23rd Annual Jingle Bell Run/Walk
(Districts I and VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure Tiffany Wilson, Development Director for the Arthritis Foundation Kansas, Chapter is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

23rd Annual Jingle Bell Run/Walk for Arthritis Saturday, December 4, 2010 9:00 am – 12:00 pm

- § Lewis Street, McLean Boulevard to Water Street
- § McLean Boulevard, Lincoln Street to Douglas Avenue

The event sponsor will arrange to remove the blockades as necessary to allow emergency vehicle access during entire designated time period. The blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

**City of Wichita
City Council Meeting
September 28, 2010**

TO: Mayor and City Council

SUBJECT: ASR – Zebra Mussel Control Design Build Contract (All Districts)

INITIATED BY: Department of Water Utilities

AGENDA: Consent

Recommendation: Approve the agreement with Burns & McDonnell/CAS.

Background: In 2006 the Wichita Water Utilities completed a study of possible measures to control the infestation of zebra mussels in Cheney Reservoir. In September 2007, biologists with Kansas Department of Wildlife and Parks confirmed that the adult mussels were present in the reservoir. This confirmation changed the focus of staff effort towards control and away from prevention. The engineering firm AECOM was retained by the City to conduct a zebra mussel control design study. The purpose of the study was to evaluate and recommend the most efficient and effective zebra mussel control strategy for the intake piping and pumping facilities at Cheney Reservoir. Two technical memorandums titled “Zebra Mussel Control Experience” and “Viable Alternatives and Evaluation” were completed in January and April of 2009 respectively. The Zebra Mussel Control System Design Study Conceptual Design and Final Recommendations Report were completed in December of 2009. On March 9, 2010, the City Council approved the initiation of Capital Improvement Project (CIP) W-13 and authorized the issuance of a Request for Proposal (RFP) for a team (engineer/contractor) to design and construct the Zebra Mussel Control System.

Analysis: Zebra mussels are a foreign species of clams that were introduced into this country in the Great Lakes in the 1980’s. Since that time this prolific aquatic pest has spread over the United States and now exists in Cheney Reservoir. Cheney Reservoir, located on the North Fork of the Ninnescah River, was constructed in 1965 and supplies over 60 percent of the City’s water. The purpose of this project is to design and construct a zebra mussel control system.

The study and reports done for the City by AECOM recommended that the City use a copper ionization process for zebra mussel control versus the alternative sodium hypochlorite chemical feed process. The City selected the copper ionization process (MacroTech) based on its lower net present worth (\$1,925,636), lower life cycle cost and lower environmental risks. Cheney Pump Station will be the first water treatment installation of the MacroTech copper ionization process. This simple process is comprised of two copper plates with an electrical charge which releases copper ions into the water. The level of copper is enough to inhibit eating, breeding and settling of zebra mussels. This will protect the intake structure, piping systems and pump station. The ozone process that was constructed for taste and odor control will kill the mussels and protect the 20 miles of pipeline between Cheney Pump Station and the Water Treatment Plant.

The RFP for the Design/Build of Zebra Mussel Control System was issued June 18, 2010, and responses were due in Purchasing on July 9, 2010. Proposals were received from MKEC/Wildcat, Burns & McDonnell/CAS and AECOM/UCI. All firms were interviewed on August 9th, 2010 and Burns & McDonnell/CAS was chosen by the Staff Screening and Selection Committee as the top candidate. Their proposed design provided the least amount of disruption to day to day activities as well as used existing space for equipment. This allows for smaller buildings which reduces both construction costs and future maintenance costs.

Financial Considerations: The total approved project budget is \$2,000,000. The previously approved MacroTech copper ion system was purchased directly from MacroTech at a cost of \$267,828, leaving an available project budget of \$1,732,172. The attached design/build contract with Burns & McDonnell/CAS in the amount of \$1,370,000 will complete the installation of this project.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable, compliant and secure utilities

Legal Considerations: The agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the design/build agreement with Burns & McDonnell/CAS and authorize the necessary signatures.

Attachments: Agreement with Burns & McDonnell/CAS.

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City of Wichita
City Council Meeting
September 28, 2011

TO: Mayor and City Council

SUBJECT: Blind and Physically Handicapped (Talking Books) Contract

INITIATED BY: Library

AGENDA: Consent

Recommendation: Approve the contract.

Background: The Wichita Public Library is one of five agencies that has traditionally delivered library service to blind and physically handicapped residents of Kansas through contracts with the Kansas State Library. The Wichita site delivers service to eligible customers from all of Sedgwick County and fifteen counties in Southeast Kansas. Although Wichita's participation as a contracting agency has been in place for many years, annual contracts renewing the relationship with the State Library are required because federal funds are included in the contract payment.

Analysis: Wichita's ability to house a subregional library for the blind and physically handicapped allows the Library to enhance service to customers with special needs. While most users of this service must rely on toll-free phone and mail access to the library service, Wichita's customers have the added benefit of receiving walk-in service from Wichita's Central branch library. Senior centers, retirement and nursing homes, special education centers and other agencies also benefit from having subregional staff locally available to promote and/or present training about this program. The program budget was reviewed and approved by the Library Board of Directors during its September 21, 2010 meeting.

Financial Considerations: Grants are funded through a combination of federal and state monies and are divided among subregional libraries by the respective share of the statewide service delivery. No local match is required. The Wichita contract for the 2010-2011 year is offered at \$122,079, a decrease of \$3,513 (2.79%) from the previous year. Hours of part-time positions in the subregional library will be reduced in order to maintain service within the contract funding.

Goal Impact: The plan addresses the Quality of Life goal by enabling the Wichita Public Library system to extend access to information and recreation resources to citizens who do not have the visual or physical ability to use traditional print materials.

Legal Considerations: The contract has been reviewed and approved by Law Department staff.

Recommendation/Action: It is recommended that the City Council approve the 2010-2011 Talking Books Service contract and authorize the necessary signatures.

KANSAS STATE LIBRARY
F.Y. **2011**
Library Services and Technology Act
Talking Books Service

Project No. **11-LSTA-3-G**

THIS CONTRACT, made and executed this **FIRST** day of **OCTOBER, 2010**, by and between the State Library of Kansas, hereinafter referred to as the State Library, and THE CITY OF WICHITA, a municipal corporation in the state of Kansas. This contract shall be administered through the City's Department of Libraries, by its Board of Directors, hereinafter referred to as the Board.

WITNESS THAT:

WHEREAS, the Kansas Legislature has allocated funding for services to the Kansas Talking Books Service and the Board meets the requirements of the Kansas Administrative Regulations, for Kansas Talking Books Service, and

WHEREAS, the Congress of the United States has enacted the Library Services and Technology Act, and

WHEREAS, the Board submitted to the State Library a budget for funds and agrees to comply with all the terms and conditions of the LSTA Five Year State Plan;

NOW THEREFORE, it is mutually understood and agreed that the Board shall administer a program in compliance with the Five-Year State Plan, Project No. **11-LSTA-3-G** of the FY **2011** and the approved application.

The Board shall expend or encumber all moneys received under this contract no later than **September 30, 2011.** The Board shall expend all moneys received under this contract solely for the purposes stated, with no administrative fees allowed, in the Five-Year State Plan of FY **2011**, Project No. **11-LSTA-3**, the approved budget, and this contract, and shall repay to the State Library all moneys lost or diverted to purposes other than those stated herein.

The State Library shall pay to the Board from a combination of State and Federal funds a sum of **SIXTY ONE THOUSAND THIRTY-NINE DOLLARS AND FIFTY CENTS (\$61,039.50)** in the first payment on or about October 1, 2010.

The State Library shall pay to the Board from available State funds the sum of **SIXTY ONE THOUSAND THIRTY-NINE DOLLARS AND FIFTY CENTS (\$61,039.50)** in the 2nd payment upon completion and approval by the State Library, on or about April 1, 2011.

AND IT IS FURTHER mutually understood and agreed that the money shall be payable to the Board only upon receipt of the moneys by the State Library through funds of the State of Kansas and LSTA. If the funds are not received by the State Library, this contract shall be void and the obligations of both parties herein shall be terminated.

IT IS FURTHER mutually understood that the provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto and executed by the parties to this agreement, are hereby incorporated in this contract and made a part hereof.

Susan Estes, Library Board President

Carl Brewer, Mayor

Cynthia Berner Harris, Director of Libraries- (Responsible for financial reporting)
Phone # **(316) – 261-8520**

Jo Budler, State Librarian of Kansas

Approved as to form: _____
Gary Rebenstorf, Director of Law

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the FIRST day of OCTOBER, 2010.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Use of City Self-Insurance Health and General Funds for 2010 Flu Shots

INITIATED BY: Human Resources Department

AGENDA: Consent

Recommendation: Approve Agreement between City of Wichita and Sedgwick County Health Department (SCHD).

Background: For the past ten years, Sedgwick County has administered flu shots to City employees, charging only for the cost of the vaccine. This year, the shots will be given between October 4th and November 11th, at various locations, including City Hall.

Analysis: Administering the vaccine is a preventive measure to prevent the possible spread of the flu among employees.

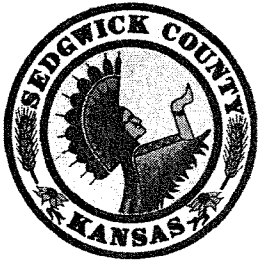
Financial Considerations: The self-insurance health fund budget contains \$29,000 for flu shots. The Human Resources Department General Fund budget contains another \$4,000. At \$30 per shot, the \$33,000 agreement will provide shots for 1,100 City employees. Past experience has shown that 800-900 employees receive the vaccine annually, with numbers increasing each year. Based on this history, the 1,100 shots will be sufficient to meet the demand.

Goal Impact: Internal Perspectives. Keeping employees healthy has a positive impact on productivity.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement between the City of Wichita and Sedgwick County Health Department (SCHD).

Attachment: Billing Agreement signed by Purchasing Department.



Sedgwick County Health Department

2716 W. Central

Wichita, KS 67203

TEL: (316) 660-7300 FAX: (316) 660-4917

September 8, 2010

To Whom It May Concern:

This letter is to confirm that the Sedgwick County Health Department (SCHD) is entering into a billing agreement with the City of Wichita (COW). The Health Department will provide the following to COW Employees beginning October 4, 2010 and ending November 11, 2010

- Flu Shots - \$30

The City of Wichita all Employee Flu Clinic is scheduled for Thursday, October 7th from 8:30 am – 11:30 am on first floor of City all. All City of Wichita Employees can receive flu shots beginning October 4, 2010 at the Clinical Services Office located at 2716 W. Central and any public mobile clinic locations.

The SCHD will bill the City of Wichita. The COW agrees to pay the SCHD within thirty days following receipt of invoice.

Employees are required to present an identification letter and/or id prior to receiving these services.

Please return a signed copy of this letter to show receipt and acknowledgment of these terms. We will need a signed copy of this letter in our office before services can be provided to our employees. The terms of this billing agreement are to be reviewed annually. If there are any questions, please let me know.

Sincerely,

J'Vonnah Maryman, MPH
Program Manager, Immunization and Health Screenings
Sedgwick County Health Department
(316) 660-7183
fax (316) 660-4917

I have received and agree to the terms listed in this letter regarding the billing agreement for Flu shots.

Melinda Walker

Signature, and title, of person responsible for payment

09-15-10

Date

Purchasing Manager

CITY OF WICHITA
City Council Meeting
September 28, 2010

TO: Mayor and City Council Members

SUBJECT: Payment of Condemnation Award to Acquire Property From Brandon T. Bonewell at 1201 S. 119th Street West for the 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project (District V)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of the appraisers' award, fees, and court costs.

Background: On August 4, 2009, the City Council approved funding to acquire right-of-way for a project to improve 119th Street West from Kellogg to Maple from two lanes with open ditches to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaping will also be installed in the available right of way. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of 119th. The project requires the acquisition of all or part of sixteen privately owned tracts. On April 13, 2010, the Council authorized the acquisition of these tracts of land. The court appointed appraisers filed a report determining the value of 1201 S. 119th Street West, owned by Brandon T. Bonewell. The award is \$10,653. The related appraiser fees total \$3,600. Court costs are an additional \$175.50.

Analysis: In order for the City to obtain title to this property, it must pay the amount of the award, together with appraisers' fees, into the Clerk of the District Court on or before October 11, 2010. Acquisition of this tract is necessary in order to continue with the construction and improvement of the planned 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project.

Financial Considerations: The cost of acquiring this property will be paid from General Obligation Bonds. Failure to pay the award by the date ordered by the Court would be deemed an abandonment of the award, and subject the City to an award for the same sum in fees and to the court, plus the owner's expenses in defending the action. The appraisers' award of \$10,653 and the related appraiser fees of \$3,600, along with Court Costs of \$175.50 make the total award for this portion of the 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project \$14,428.50.

Goal Impact: The acquisition of these parcels is necessary to ensure Efficient Infrastructure in a rapidly growing part of the City.

Legal Considerations: In order to acquire the property, it is necessary to authorize payment of the award, together with the fees, to the Clerk of the District Court on or before October 11, 2010. Failure to do so would waive the acquisition, yet significantly increase the court ordered costs and fees.

Recommendations/Actions: It is recommended that the City Council authorize payment to the Clerk of the District Court of the appraisers' award for acquiring 1201 S. 119th Street West, for the 119th Street West, Kellogg Avenue to Maple Avenue Improvement Project in the amount of \$10,653, together with the related appraiser fees of \$3,600 and court costs of \$175.50 for a total of \$14,428.50 as per the journal entry, for acquisition of this property.

Attachments: None.

CITY OF WICHITA
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Easement across City Owned Property at 2627 West 9th Street in Conjunction with the Wireless Array Lease with New Cingular Wireless (Districts VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Grant the easement.

Background: On June 14, 2005, the City Council approved a lease with New Cingular Wireless for an antenna array on the roof of McLean Manor at 2627 West 9th Street. The lease, in part, granted New Cingular Wireless the right to use necessary utility easements as well as ingress, egress and access to the property adequate to service the array. The array requires additional connectivity to existing transmission cables in the right of way. This additional connection will be accomplished via a utility easement across the City property to the building and then through existing utility runs within the building to the wireless array.

Analysis: The easement area for the new conduit location lies totally within City ownership. The easement area appears to overlap an existing easement area granted to Kansas Gas and Electric (KG&E). Cingular will be responsible for securing all permits required for the conduit. They also will be responsible repairing any damage to the City property or KG&E property.

Financial Considerations: There is no cost to the City.

Goal Impact: The acquisition of this easement is helps to ensure Efficient Infrastructure by improving wireless telecommunications in a developed part of the City.

Legal Considerations: The Law Department has approved the easement as to form.

Recommendation/Action: It is recommended that the City Council approve the easement and authorize necessary signatures.

Attachments: Aerial map, tract map and permanent easement.

PERMANENT EASEMENT

THIS EASEMENT made this ____ day of _____, 2010, by and between the City of Wichita, Kansas, a Municipal Corporation, "Grantor", and New Cingular Wireless PCS, LLC, a Delaware limited liability company, "Grantee".

WITNESSETH: That Grantor, in consideration of the sum of One Dollar and other Good and Valuable Considerations (\$1.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual right-of-way and easement for constructing, maintaining, and repairing utilities over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

A ten foot wide parcel situated in the Southeast quarter of Section 13, Township 27 South, Range 1 West of the 6th PM, in Wichita, Sedgwick County, Kansas lying 5.00 feet on each side of the following described centerline:

Commencing at the Northwest corner of said Southeast quarter; thence along the North line of said Southeast quarter North 89 degrees 24' 12" East a distance of 1,873.08 feet to a point on said North line; thence leaving said North line South 09 degrees 12' 11" East a distance of 218.84 feet to point on the East Right of Way line of North Edwards Avenue as now established, said point being the Point of Beginning of said centerline; thence South 77 degrees, 42' 46" East, a distance of 74.03 feet to the Point of Termination.

Said parcel is graphically depicted in Exhibit A, attached.

And Grantee, heirs and assigns is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utilities. Grantee does acknowledge the possible existence of a superior easement to Kansas Gas and Electric Company (KG&E) as shown on Exhibit A and recorded at File 561, Page 1183.

Grantee shall repair any physical damage to property of Grantor and/or KG&E, or pay any substantial damages on account of physical injury to property of Grantor and/or KG&E, by laying, construction, maintenance, alteration, inspection, repair, replacement, protection, relocation, operation or removal of said utility lines and facilities. Said damages, if not mutually agreed upon shall be ascertained and determined by three disinterested persons, one to be appointed by the Grantor or KG&E, one to be appointed by the Grantee, and the third to be chosen by the two so appointed. The damaged determined by such persons, or a majority of them shall be conclusive as to the facts.

This grant shall be binding upon the heirs, successors and assigns of the undersigned.

Grantor:
By Direction of the City Council:

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

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IN WITNESS WHEREOF: Said Grantor and Grantee has signed these presents the day and year first written.

Grantor:

By Direction of the City Council:

Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on 1 day of Sept, 2010 by Carl Brewer, Mayor of the City of Wichita, a Municipal Corporation and Karen Sublett, City Clerk of the City of Wichita, a municipal corporation.

Monica Rohland
Notary Public

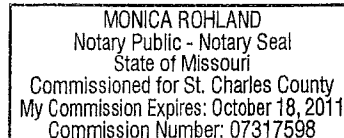
My Commission Expires: 10-18-11

Grantee:

New Cingular Wireless PCS, LLC

a Delaware limited liability company

By AT&T Mobility, Corporation, its Manager



[Signature]
Name: JAMES G. STOCKER
Title: DREAMMANAGER, RE-IC-MG/KS

Witnessed By:

[Signature]
Name: Eric Webb

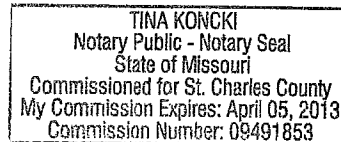
STATE OF Missouri)
) ss:
St. Charles COUNTY)

On the 1st day of September, 2010 before me personally appeared James G. Stokell, and acknowledged under oath that he is the General Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Tina Koncki
Notary Public

My Commission Expires: April 05, 2013

Approved as to form:



Gary E. Rebenstorf, Director of Law

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McLean Manor - 2627 West 9th Street



<input type="checkbox"/>	Identified Features
<input type="checkbox"/>	Property Parcels
Roads	
	State Highway
	US Federal Highway
	Interstate
	KTA
	Arterial
	Collector
	Minor
	Ramp
	Railroads
	Quarter Section
	Waterways
	Streams
	Parks
	Airports
	SDERASTER.S-DEDATA.ORTH-01FT
	SDERASTER.S-DEDATA.ORTH-0
City Limits	
	Andale
	Bel Aire
	Bentley
	Cheney
	Clearwater
	Colwich
	Derby
	Eastborough
	Garden Plain
	Goddard
	Haysville
	Kechi
	Maize
	Mount Hope



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



City of Wichita
City Council Meeting
September 28, 2010

TO: Mayor and City Council

SUBJECT: Planeview Community Library Memorandum of Agreement. (District III)

INITIATED BY: Library

AGENDA: Consent

Recommendation: Approve the agreement renewal and authorize the designated signatures.

Background: Since the summer of 2003, public library service for the Planeview neighborhood has been delivered through a partnership between Colvin Elementary School and the Wichita Public Library. A memorandum of agreement establishes the framework for shared decision-making concerning the design and delivery of library service. The original agreement was for a twelve-month period with a requirement that the document be reviewed on an annual basis. Staff from the school district and the public library has completed the review process and have reached consensus on a revised agreement to guide operation for the 2009-2010 year.

Analysis: During 2009, 4,398 items were circulated to the public from the Planeview Community Library. This was a 19% increase from the previous year, due in large part to the fact that there were no long-term closures for building remodeling during the year. Because there have been very few changes to the original agreement over the course of the last seven years, this proposed agreement eliminates the requirement of annual renewals. Instead, this is intended to become an ongoing agreement unless changes in service levels are required by either the City of Wichita or Wichita Public Schools. The Library Board reviewed the agreement on September 21, 2010 and recommended approval. The USD259 School Board is scheduled to receive and act upon the proposed agreement on September 27th.

Financial Considerations: As part of the Library's 2010 materials budget reduction, all City funding dedicated for the purchase of new materials to be assigned to the Planeview Library was eliminated. This does not prevent the Library from assigning new items to that location as may be appropriate. Approximately 7,400 City-owned items remain in the shared library collection. Assistance with special programs remains a part of the public library's youth outreach service schedule. Costs to transport public library materials to and from the Library are incorporated into the Library's branch delivery route. All other operational expenses are the responsibility of the school district.

Goal Impact: The agreement helps to address the community's Quality of Life by expanding access to the information and recreation resources of the public library system.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council endorse the City's participation in the partnership for an additional year and authorize the Mayor to sign the memorandum of agreement.

Memorandum of Agreement

For delivery of library service from the Colvin School Library

Revised September 2010

This Memorandum of Agreement provides guidelines for operation of the Colvin Elementary School library, open to the community by the Wichita Public Schools in partnership with the City of Wichita through the Wichita Public Library and to be known as the Planeview Community Library.

HOURS OF OPERATION. The hours of operation of the Planeview Community Library will be 10:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of school holidays and district in-service days. Additional closings may be authorized by the Colvin school principal with at least one week's notice given to the Public Library to allow for sufficient notification to the community.

OPERATIONAL EXPENSES. Wichita Public Schools will be responsible for the following operational expenses of the Planeview Community Library: staffing, utilities including telecommunications expenses and support, maintenance and support of the integrated library automation system, custodial services, operation and maintenance of plant facilities, liability and hazard insurance. Wichita Public Schools also will be responsible for the purchase and maintenance of a library materials collection sufficient to meet the educational and curriculum needs of the Colvin students and staff.

The City of Wichita on behalf of the Wichita Public Library will be responsible for maintenance of a collection of adult, young adult and children's materials to allow for expanded service to the Planeview community and will provide print materials to support summer reading programs.

PROMOTION. Wichita Public Schools will maintain a direct telephone line (973-7609) which will be the published public number for the Planeview Community Library. The Wichita Public Library will include the Planeview Community Library in all listings of its library facilities. Colvin Elementary School will regularly distribute information about the Planeview Community Library and its services to students, parents and other members of the Colvin/Planeview community. All media releases concerning programs, services or activities of the Planeview Community Library will be jointly prepared and distributed by Wichita Public Schools and the City of Wichita.

COLLECTION DEVELOPMENT. An Advisory Committee led by the Wichita Public Schools' Supervisor of Library Media Operations will meet on an as-needed basis to provide recommendations for collection changes. Committee members will include school district and City staff along with a culturally diverse group of community representatives. In addition to the Supervisor of Library Media Operations, school district representatives on the committee will include the Colvin Elementary School Principal and Librarian and the Jardine Middle School Librarian. City staff serving on the committee will include the Director of Libraries, the Wichita Public Library's Coordinator of Collection Development, and the District 3 Neighborhood Assistant or his/her designee. Community representatives on the committee will include a member of the Colvin Site Council to be appointed by the School Principal, the Library Board President or his/her designee, and the President of the Planeview Neighborhood Association or his/her designee.

The Wichita Public Library will be responsible for maintaining materials collections for young adults and adults, and will supplement materials collections for children. The collection size and scope of materials assigned to the Planeview Community Library will be determined by available space and use statistics. Final decisions about city-owned materials assigned to the Planeview Community Library will fall within the requirements of the Wichita Public Library Collection Development Policy and will be the responsibility of the Wichita Public Library Collection Development Manager.

All new Wichita Public Library acquisitions to be added to the Planeview Community Library collection will be sent through the Wichita Public Schools Library Media Services Department for addition to the integrated library automation system prior to being made available to Planeview customers.

The Wichita Public Schools will be responsible for maintaining materials collections for elementary school students and staff. The collection size and scope of materials will be determined by available space and use statistics. Final decisions about school-owned materials assigned to the Planeview Community Library will fall within the requirements of the Wichita Public Schools' Policies and will be the responsibility of the Colvin School Librarian.

ACQUISITIONS BUDGETS. Using the mutually agreed upon collection development plan as its guide, the Wichita Public Schools will be solely responsible for the purchase of materials made through the Colvin Elementary library materials budget and community donations to the school's library gift fund.

Using the mutually agreed upon collection development plan as its guide, the City of Wichita through the Wichita Public Library will be solely responsible for the assignment of materials to be added to the public library collections maintained for use at Planeview.

As appropriate, the Planeview Community Library collection development team will work with Wichita Public Schools and Wichita Public Library Foundation grant-writing staff to identify and solicit private sector funding for enhancement of the Planeview Library materials collection. Each grant will include a specific collection program, a time frame for purchases, and a designation about the entity responsible for grant administration. To ensure coordination of effort, neither the Wichita Public Schools corporately or on behalf of Colvin Elementary School nor the City of Wichita corporately or on behalf of the Wichita Public Library will solicit grant funding or donations for the Planeview Community Library without notifying the members of the collection development team and the grant-writing offices of the respective entities.

COLLECTION MANAGEMENT. Wichita Public Schools will be responsible for the following tasks:

- Use of the integrated library automation system for circulation and inventory control
- The addition of all Planeview Community Library materials, including those owned by the City of Wichita, to the integrated library automation system
- Delivery of new city-owned Planeview Community Library materials from Library Media Services to Colvin Elementary School
- Customer access to the On-Line Public Access Catalog
- Inventory control, mending and discarding of library materials owned by the school district
- An arrangement of furniture, equipment and shelving within the Planeview Community Library space that ensures ADA compliance and ease of customer access to materials during all hours of library operation
- Generation of Planeview Community Library use statistics to be submitted to the Wichita Public Library's Support Services Manager from the integrated library automation system on no less than a monthly basis

The Wichita Public Library will be responsible for the following tasks:

- Maintenance of a patron account for the Planeview Community Library
- The addition of all city-owned items assigned to the Planeview Community Library to the public library automation system

- Delivery of new city-owned Planeview Community Library materials from the Wichita Public Library Central Branch to the Wichita Public Schools Library Media Services Department where they will be processed and added into the Colvin inventory
- Maintenance of a web-based public access catalog for information about Wichita Public Library holdings, including those assigned to the Planeview Community Library
- Inventory control, mending and discarding of all library materials owned by the City of Wichita
- Inclusion of the Planeview Community Library on the delivery route of the branch library courier
- Coordination with City IT/IS staff to provide an ADA compliant computer workstation within the Colvin Neighborhood City Hall

FEES AND FINES. Colvin school staff will be responsible for establishing the schedule of fees and fines for Planeview Community Library services. Colvin students will not be charged fines for overdue materials borrowed from the Library. Fees will be charged for overdue, lost and damaged materials loaned from the Planeview Community Library to community customers. Fees for lost and damaged materials owned by the Wichita Public Library will become revenue of the City of Wichita. Fees for lost and damaged materials owned by the Wichita Public Schools will be placed in the Colvin Library Gift Fund and will be used to purchase new or replacement library resources.

OPERATIONAL POLICIES AND PROCEDURES. Policies and procedures for use of the Planeview Community Library will be developed and implemented by Colvin school staff. As requested, Public Library staff will share information about their operational policies and will assist with training school staff in the implementation of these policies and procedures as appropriate.

All circulation activities of the Planeview Community Library will be transacted through the Wichita Public Schools' integrated library automation system. Wichita Public Library borrower's accounts will not be used in this location. Wichita Public Library customers may establish supplemental borrowing privileges for the Planeview Community Library. Outstanding issues with Wichita Public Library customer accounts will prevent the creation or use of borrowing privileges from the Planeview Community Library. Similarly, outstanding issues with Planeview Community Library customer accounts will prevent the creation or use of borrowing privileges from the Wichita Public Library.

Planeview Community Library customers wishing to use Wichita Public Library materials not available in the Planeview collection but available from other Wichita Public Library locations may do so by placing reserve requests through the web-based public access catalog or by making interlibrary loan

requests through the Colvin library staff. Items will be processed by the Wichita Public Library as “interlibrary loans” made to the Planeview Community Library. Reserve/transfer fees will not be charged but all other interlibrary loan protocols and policies will apply.

Items loaned from the Planeview Community Library may be returned to any Wichita Public Library location but will not be removed from customer accounts until the items are received at Colvin. Items loaned from the Wichita Public Library may be returned to the Planeview Community Library but will not be removed from customer accounts until the items are received at a Wichita Public Library facility. Late fees will be based upon the date on which items are returned by customers as documented by library staff rather than the date on which items will be removed from customer accounts. When outstanding fees reach \$10.00, the Wichita Public Library may refer the customer’s account to collection. Fees collected from the Planeview Community Library on behalf of the Wichita Public Library will be submitted every September and March to the Customer Services Manager.

The Planeview Community Library will participate in programming such as the Wichita Public Library Summer Reading Club and Teen Read programs and other special programs and events. Summer hours of operation will be determined by the Colvin principal and staff. This information will be communicated to the Wichita Public Library by March 1 each year.

Wichita Public Library staff will schedule times to be at the Planeview Community Library to complete Summer Reading registrations and will ensure that training materials are provided to school library staff to help them complete registrations throughout the remainder of the reading programs.

Public access computer workstations may be added to the service mix of the Planeview Community Library if suitable hardware can be obtained from grants or gifts. If received, workstations will become the property of the Wichita Public Schools. Workstations will be added to the school telecommunications network, will be supported and maintained by Wichita Public Schools staff and will be subject to rules of use established by the Colvin principal and staff.

Meetings of school district and public library staff will be used as a method to ensure ongoing communication and delivery of effective and efficient service from the Planeview Community Library. The Colvin School Principal will schedule and facilitate these meetings on an as-needed basis. In addition to the Principal, the Colvin School Librarian and the Wichita Public Library’s Coordinator of Customer Services and Coordinator of Collection Development will comprise this problem-solving

group. The Wichita Public Schools' Supervisor of Library Media Operations and the Wichita Public Library's Director of Libraries will participate in meetings on an as-needed basis.

TERM OF AGREEMENT. This Memorandum of Agreement will be in effect indefinitely unless the Wichita Public Schools or the City of Wichita provides the other party written notice not later than sixty days prior to terminating the Agreement. In addition, either party may terminate this Memorandum of Agreement at any time upon an event of default by the other party. An event of default occurs when either party is in violation of a term of the Memorandum of Agreement and the other party provides written notice of violation and the violation is not corrected within thirty (30) days of receipt of the notice. Upon a party's failure to correct a violation, the Agreement can be terminated by the non-violating party providing fifteen days advance written notice of termination to the violating party.

Upon termination of this Agreement, the City of Wichita will remove books and other property from the Colvin School Library that were purchased with City funds. All other real and personal property that is part of the Colvin School Library will be retained by the Wichita Public Schools upon termination. Upon termination, the Colvin School Library will no longer operate as or be a part of the Wichita Public Library System.

AMENDMENTS. The parties agree that no changes, additions or modifications to this agreement may be made except by written addendum signed by all parties. Terms of this agreement shall be reviewed on an annual basis. The Supervisor of Library Media Operations for the Wichita Public Schools will schedule this review with the Director of the Wichita Public Library.

SUPERSEDING PRIOR AGREEMENTS. This Memorandum of Agreement supersedes and replaces all previous agreements entered into between the parties hereto that relate to library services at the Colvin School Library.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Agreement to be effective as of the date of its signing:

Carl Brewer, Mayor
City of Wichita

Connie Dietz, President
USD 259 Board of Education

Susan Estes, President
Library Board of Directors

Attest:

Karen Sublett, City Clerk

Mike Willome, Clerk of the Board

Approved as to Form:

Gary Rebenstorf, Director of Law

Second Reading Ordinances for September 28, 2010 (first read on September 21, 2010)

Public Hearing and Tax Exemption Request, Leading Technology Composites, Inc. (District IV)

ORDINANCE NO. 48-838

An Ordinance exempting property from ad valorem taxation for economic development purposes pursuant to Article 11, Section 13, of the Kansas Constitution; providing the terms and conditions for ad valorem tax exemption; and describing the property of leading technology composites, inc., so exempted.

Public Hearing and Tax Exemption Request, Burnham Composite Structures, Inc./GRL Property Management, Inc. District IV

ORDINANCE NO. 48-839

An Ordinance exempting property from ad valorem taxation for economic development purposes pursuant to Article 11, Section 13, of the Kansas constitution; providing the terms and conditions for ad valorem tax exemption; and describing the property of GRL Property Management, Inc., so exempted.

119th Street West Improvement, between Kellogg and Maple.

ORDINANCE NO. 48-840

An Ordinance amending Ordinance No. 48-402 of the City of Wichita, Kansas declaring 119th street west, between Kellogg and maple (472-84850) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

ZON2010-00027 – City zone change from TF-3 Two-Family Residential (“TF-3”) to LC Limited Commercial (“LC”) and GO General Office (“GO”); generally located southwest of the intersection of Douglas Avenue and Hillside Avenue. (District I)

ORDINANCE NO. 48-842

An Ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

DER2010-0007 -- Approval of Subdivision Regulation Amendments regarding Off-Street Parking for Residential Streets.

ORDINANCE NO. 48-844

An ordinance amending the “Wichita-Sedgwick County Subdivision Regulations, December 4, 2008 Edition,” as adopted by reference in City of Wichita Code Sec. 28.05.010 as amended by Ordinance No. 48-180.

A10-02 Request by Unified School District No. 259 to annex lands generally located on the west side of 143rd Street East, approximately one-quarter mile north of Pawnee.

ORDINANCE NO. 48-845

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the City of Wichita, Kansas. (A10-02)

Harry and Rock Intersection Improvement. (District II)

ORDINANCE NO. 48-846

An ordinance amending ordinance no. 48-625 of the city of Wichita, Kansas declaring Harry Street, between the Kansas Turnpike and Rock Road (472-84577) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

Acquisition by Eminent Domain of Tracts Required for the 119th Street West from Kellogg to Maple Improvement Project. (District IV)

ORDINANCE NO. 48-847

An Ordinance providing for the acquisition by Eminent Domain of certain private property, easements and right-of-way therein, for the purpose of acquiring real property for the 119th Street West, Kellogg Avenue to Pawnee Avenue Improvement Project in the City of Wichita, Sedgwick County, Kansas; designating the lands required for such purposes and directing the City Attorney to file a petition in the District Court of Sedgwick County, Kansas, for acquisition of the lands and easements therein taken and providing for payment of the cost thereof.